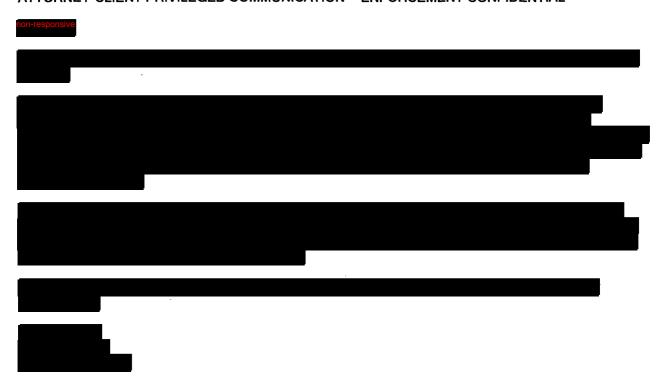
US EPA RECORDS CENTER REGION 5



09/29/2009 03:12 PM

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION -- ENFORCEMENT CONFIDENTIAL





DEUTSCHE BANK AG, NEW YORK BRANCH GLOBAL LOAN OPERATIONS STANDBY LETTER OF CREDIT UNIT 60 WALL STREET, 38<sup>TH</sup> FLOOR NEW YORK, NEW YORK 10005 MAIL STOP NYC60-3812

JUNE 10, 2004

IRREVOCABLE STANDBY LETTER OF CREDIT NO. DBS-15867

#### BENEFICIARY:

COMMISSIONER
INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT
100 NORTH SENATE STREET
INDIANAPOLIS, IN 46206-6015

#### DEAR SIR OR MADAM:

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. DBS-15867 IN YOUR FAVOR, AT THE REQUEST AND FOR THE ACCOUNT OF REFINED METALS CORPORATION, 1300 DEERFIELD PARKWAY, BUILDING 200, ALPHARETTA, GEORGIA 30004-8532 UP TO THE AGGREGATE AMOUNT OF U.S. DOLLARS SEVENTY THOUSAND EIGHT HUNDRED FORTY EIGHT AND 00/100 \*\*U.S.\$70,848.00\*\*, AVAILABLE UPON PRESENTATION OF:

- (1) YOUR SIGHT DRAFT, BEARING REFERENCE TO THIS LETTER OF CREDIT NO. DBS-15867; AND
- (2) YOUR SIGNED STATEMENT READING AS FOLLOWS:

"I CERTIFY THAT THE AMOUNT OF THE DRAFT IS PAYABLE PURSUANT TO REGULATIONS ISSUED UNDER AUTHORITY OF THE ENVIRONMENTAL MANAGEMENT LAWS AS DEFINED AT IC 13-11-2-71 AS AMENDED."

THIS LETTER OF CREDIT IS EFFECTIVE AS OF JUNE 10, 2004 AND SHALL EXPIRE ON JUNE 10, 2005, BUT SUCH EXPIRATION DATE SHALL BE AUTOMATICALLY EXTENDED FOR A PERIOD OF ONE YEAR ON JUNE 10, 2005 AND ON EACH

SUCCESSIVE EXPIRATION DATE, UNLESS, AT LEAST ONE HUNDRED TWENTY (120) DAYS BEFORE THE CURRENT EXPIRATION DATE, WE NOTIFY BOTH YOU AND REFINED METALS CORPORATION BY CERTIFIED MAIL THAT WE HAVE DECIDED NOT TO EXTEND THIS LETTER OF CREDIT BEYOND THE CURRENT EXPIRATION DATE. IN THE EVENT YOU ARE SO NOTIFIED, ANY UNUSED PORTION OF THE CREDIT SHALL BE AVAILABLE UPON PRESENTATION OF YOUR SIGHT DRAFT FOR ONE HUNDRED TWENTY (120) DAYS AFTER THE DATE OF RECEIPT BY BOTH YOU AND REFINED METALS CORPORATION, AS SHOWN ON THE SIGNED RETURN RECEIPTS.

WHENEVER THIS LETTER OF CREDIT IS DRAWN ON UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT, WE SHALL DULY HONOR SUCH DRAFT UPON PRESENTATION TO DEUTSCHE BANK AG, NEW YORK BRANCH AT 60 WALL STREET, NEW YORK, NEW YORK, 10005, ATTENTION GLOBAL LOAN OPERATIONS, STANDBY LETTER OF CREDIT UNIT MAIL STOP NYC60-3812 AND DEUTSCHE BANK AG, NEW YORK BRANCH SHALL DEPOSIT THE AMOUNT OF THE DRAFT DIRECTLY INTO THE STANDBY TRUST FUND OF REFINED METALS CORPORATION IN ACCORDANCE WITH YOUR INSTRUCTIONS.

THIS CREDIT IS SUBJECT TO THE MOST RECENT EDITION OF THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), PUBLISHED AND COPYRIGHTED BY THE INTERNATIONAL CHAMBER OF COMMERCE (PUBLICATION NO. 500).

WE CERTIFY THAT THE WORDING OF THIS LETTER OF CREDIT IS IDENTICAL TO THE WORDING SPECIFIED IN 329 IAC 3.1-14-29, AS SUCH RULE WAS CONSTITUTED ON THE DATE SHOWN IMMEDIATELY BELOW.

**DATE: JUNE 10, 2004** 

AUTHORIZED SIGNATURE

NAMEHARLES P. FERRIS

ASSISTANT VICE PRESIDENT

VERY TRULY YOURS, DEUTSCHE BANK AG

NEW YORK BRANCH

AUTHORIZED SIGNATURE

NAME:

TITLE: EVERARDUS J. ROZING

**ASSISTANT VICE PRESIDENT** 



AMENDMENT TO OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. DBS-15867

**NOVEMBER 22, 2010** 

Deutsche Bank AG New York Branch STANDBY LETTER OF CREDIT UNIT 60 WALL STREET NEW YORK, NY 10005

Fax 212 797-0403

BENEFICIARY:

COMMISSIONER
INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT
100 NORTH SENATE STREET
INDIANAPOLIS, IN 46206-6015

EFFECTIVE NOVEMBER 30, 2010

#### DEAR SIR OR MADAM:

OUR IRREVOCABLE STANDBY LETTER OF CREDIT IN YOUR FAVOR, AT THE REQUEST AND FOR THE ACCOUNT OF REFINED METALS CORPORATION, 1300 DEERFIELD PARKWAY, BUILDING 200, ALPHARETTA, GEORGIA 30004-8532, IS AMENDED AS FOLLOWS:

EFFECTIVE NOVEMBER 30, 2010, THE AMOUNT OF THE LETTER OF CREDIT IS INCREASED BY \$20,836.00 TO \$1,757,181.00.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

VERY TRULY YOURS, DEUTSCHE BANK AG NEW YORK BRANCH

**AUTHORIZED SIGNATURE** 

NAME: CHARLES P. FERRIS

TITLE: ASSISTANT VICE PRESIDENT

AUTHORIZED SIGNATURE NAME: EVERARDUS J.ROZING

TITLE: VICE PRESIDENT

### TABLE 3 RMC Beech Grove CMS Alternative #2 Cost Estimate Excavation All Areas (Including SWMUs)

Item	Unit	Quantity	Unit Cost	Total
1 Mob/Demob (Excavation Equipment and Support Facilities)	LS	. 1	non-responsive	non-responsive
2 Health & Safety	LS	1	non-responsive	non-responsive
3 Decontamination (Excludes Buildings)	LS	1	non-responsive	non-responsive
4 Air Monitoring	LS	1	non-responsive	non-responsive
5 Temporary Erosion Controls				
Silt Fence	LF	2600	non-responsi	non-responsive
6 Storm Water Control During Construction (collect and filter)	LS	1	non-responsive	non-responsive
7 General Site Preparation Activities				
Construction Access/Decon Areas	LS	2	non-responsive	non-responsive
Clearing and Grubbing	AC	0.75	non-responsive	non-responsive
Chain Link Fence Removal	LF	1080	hon-re	non-responsive
8 Concrete Removal	•			
<6" thick slab w/ mesh reinforcement	sy	1385	non-responsive	non-responsive
7" to 24" thick portions with Rod Reinforcing	CY	612	non-responsive	non-responsive
9 Asphalt Removal	$\mathbf{S}\mathbf{Y}$	714	hon-respons	non-responsive
10 Utility Clearance	LS	1	non-responsive	non-responsive
11 Excavation/ Consolidation (to stockpile or containment cell)@1.5 tons/cy	tons	9078	non-responsive	non-responsive
12 Confirmatory soil sampling	each	100	non-responsive	non-responsive
13 Bldg Decon (Battery Brkr, furnace, refining, warehouse & office)	sf	57450	non-responsi	non-responsive
14 Decon and Demo Baghouses	LS	3	non-responsive	cnon-responsive
15 Bldg Decon and Demolition (Mat Storage, WWTP, Filter Press)	sf	32460	non-respo	non-responsive
16 Borrow Soils (imported and placed)@1.5 tons/cy	ton	9085	non-responsive	non-responsive
17 Restore drainage ditch and grassy area swale w/ sod	MSF	22	\$ non-responsive	non-responsive
18 Hydroseeding (with mulch and fertilizer)	MSF	180	non-responsive	non-responsive
19 Deed Restriction	LS	. 1	non-responsive	non-responsive
ALTERNATIVE 2 SUBTOTAL		•		non-responsive
Engineering/QA/Legal Fees (10% of Subtotal)				non-responsive
Contingency (10% of Subtotal)				non-responsive

ALTERNATIVE 2 TOTAL CAPITAL COST



### TABLE 4 RMC Beech Grove CMS Alternative #3A Cost Estimate Composite Cap

#### I. Direct Capital Costs

	Item	Unit	Quantity	Unit Cost	Total	Unit Cost Source
1	Mobilization ( Liner Crew)_	LS	1	non-responsive	non-responsive	
2	RCRA Cap					
	Grading and Berm Construction (15' avg width, 2' high, 1200' long)	CY	1333	non-responsive	non-responsive	Avg of similar Project bid in 2005
	Geomembrane, Geocomposite, Topsoil and Hydroseed (1.15 AC)	AC	1.15	non-responsive	non-responsive	Avg of similar Project bid in 2005
	Cover Soil (18" thick, imported)	SY	5566	non-respons	non-responsive	Avg of similar Project bid in 2005
3	Place Remediated Soil and Demolished Pavement with Dozer (in lifts)	CY	6687	non-respons	non-responsive	Means 2005 Site Work 02300 520 0170
3	Permieter Erosion & Sediment Control Measures	LS	1	non-responsive	non-responsive	Engineers Estimate
4	Erosion Control Mat (Jute Net)	SY	5566	non-responsi	non-responsive	Means 2005 Site Work 02300 700 0020
	ALTERNATE 3A CAPITAL COST SUBTOTAL				non-responsive	
	Engineering/QA/Legal (10% of Direct Capital Costs)				non-responsive	
	Contingency (10% of Total Direct Capital Costs)				non-responsive	
	ALTERNATE 3A CAPITAL COST TOTAL				non-responsive	
Operatio	ns & Maintenance Costs for 30 years					
1	Inspection/Repair (Annual Site Visit and Mowing)	LS	30	non-responsive	non-responsive	
2	Major Repair Once Every 5 years @ 5% of Construction Cost	LS	6	non-responsive	non-responsive	
Present Worth of 30 years of O&M						
TOTA	L COST (CAPITAL AND PRESENT WORTH O&	M)		no	on-responsive	

### TABLE 5 RMC Beech Grove CMS Alternate #3B Cost Estimate Asphalt Cap

#### I. Direct Capital Costs

	Item	Unit	Quantity	<b>Unit Cost</b>	Total	
	1 Mobilization _	LS	1	non-responsive	non-responsive	
	2 Asphalt Cap (1.15 AC)					
	Grading and Berm Construction (15' avg width, 2' high, 800' long)	CY	1333	non-responsive	non-responsive	
	Geotextile	SY	5566	non-respons	non-responsive	
	Asphaltic Conc. Pavement (6" stone base, 2" binder, 1" top)	$\mathbf{sf}$	50000	non-responsi	non-responsive	
	3 Place Remediated Soil and Demolished Pavement with Dozer (in lifts)	CY	6888	non-respons	non-responsive	
	3 Permieter Erosion & Sediment Control Measures	LS	. 1	non-responsive	non-responsive	
	ALTERNATE 3B CAPITAL COST SUBTOTAL				non-responsive	
	Engineering/QA/Legal Fees (10% of Direct Capital Costs)				non-responsive	
	Contingency (10% of Total Direct Capital Costs)			·	non-responsive	
	ALTERNATE 3B CAPITAL COST TOTAL				non-responsive	
Operat	tions & Maintenance Costs for 30 years					
1	Inspection/Repair (Annual Site Visit and Inspection)	LS	30	non-responsive	non-responsive	
2	Slurryseal 10 times in 30 years over 5,566 SY	SY	55,660	non-respo	non-responsive	
Prese	nt Worth of 30 years of O&M				non-responsive	
TOTAL COST (CAPITAL AND PRESENT WORTH O&M)						





### TABLE 6 RMC Beech Grove CMS Alternative #4 Cost Estimate Off-Site Disposal (Excluding SWMUs)

#### Alternative 4: Stabilization and Off-Site Disposal

Item	Unit	Quantity	Unit Cost	Total
1 Mob/Demob (Stabilization Equipment)	ĻS	1	non-responsive	hon-responsive
2 Stabilization (Use 1.5 tons/cy)	ton	9078	non-res <u>c</u>	non-responsive
Soil and Sedimnet Transportation and Disposal (Use 1.55 tons/cy for soil)	ton	9380	non-resp	non-responsive
12 Off-site Asphalt and Concrete Disposal 1.7 ton/cy ALTERNATIVE 2A SUBTOTAL	ton	1413	non-responsive	non-responsive
Contingency (15% of Subtotal)				non-responsive
ALTERNATIVE 4 TOTAL COST				non-responsive

### TABLE 7 RMC Beech Grove CMS Groundwater Alternative #7 Cost Estimate Groundwater Extraction and Treatment

#### Alternative 7: Groundwater Extraction and Treatment

•	Item	Unit	Quantity	Unit Cost	Total
I. Direct Capital Costs					
	a Mobilization/Site Prep	LS	1	non-responsive	cnon-responsive
	b Indirect	LS	1		
	2 Design, Work Plans and Permitting				
	2a Desing Plans and Deliverable	EA	. 1	non-responsive	
·	2b Permitting	EA	1		
	2c Regulatory Approvals	EA	1		
	2d Indirect Costs	LS	1		
•	3 Well Installation	EA	5		
	4 Extraction and Treatment System				
	4a Equipment	LS	1	non-responsive	
	4b Installation	LS	1	non-responsive	
	TOTAL DIRECT CAPITAL COST				
II. Operation and Maintenance (5 yrs)					
	1 Annual Operating Cost	LS	5	non-responsive	non-responsive
	Present Worth (i = 3.5%, n = 5 years)				
	TOTAL COST (CAPITAL AND PRESENT WORTH)				non-responsive



### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 5

### FINAL DECISION AND RESPONSE TO COMMENTS FOR SELECTION OF REMEDIAL ALTERNATIVE

**FOR** 

BASF FACILITY HOLLAND, MICHIGAN

August 2009



### TABLE 4 RMC Beech Grove CMS Alternative #3A Cost Estimate Composite Cap

#### I. Direct Capital Costs

Item	Unit	Quantity	Unit Cost	Total	Unit Cost Source
1 Mobilization ( Liner Crew)_	LS	1	non-responsive	non-responsive	
2 RCRA Cap					
Grading and Berm Construction (15' avg width, 2' high, 1200' long)	CY	1333	non-responsive	\$non-responsive	Avg of similar Project bid in 2005
Geomembrane, Geocomposite, Topsoil and Hydroseed (1.15 AC)	AC	1.15	non-responsive	non-responsive	Avg of similar Project bid in 2005
Cover Soil (18" thick, imported)	SY	5566	non-respons	non-responsive	Avg of similar Project bid in 2005
3 Place Remediated Soil and Demolished Pavement with Dozer (in lifts)	CY	6687	non-respo	non-responsive	Means 2005 Site Work 02300 520 0170
3 Permieter Erosion & Sediment Control Measures	LS	1	non-responsive	non-responsive	Engineers Estimate
4 Erosion Control Mat (Jute Net)	SY	5566	g <sup>non-respo</sup>	non-responsive	Means 2005 Site Work 02300 700 0020
ALTERNATE 3A CAPITAL COST SUBTOTAL				non-responsive	
Engineering/QA/Legal (10% of Direct Capital Costs)				non-responsive	
Contingency (10% of Total Direct Capital Costs)				non-responsive	
ALTERNATE 3A CAPITAL COST TOTAL				non-responsive	
Operations & Maintenance Costs for 30 years					
1 Inspection/Repair (Annual Site Visit and Mowing)	LS	30	non-responsive	non-responsive 0	
2 Major Repair Once Every 5 years @ 5% of Construction Cost	LS	6	non-responsive	non-responsive	
Present Worth of 30 years of O&M				non-responsive	
TOTAL COST (CAPITAL AND PRESENT WORTH O	&M)			non-responsive	

### TABLE 5 RMC Beech Grove CMS Alternate #3B Cost Estimate Asphalt Cap

#### I. Direct Capital Costs

	Item	Unit	Quantity	Unit Cost	Total	
	1 Mobilization _	LS	1	non-responsive	non-responsive	
	2 Asphalt Cap (1.15 AC)				<u></u> -	
	Grading and Berm Construction (15' avg width, 2' high, 800' long)	CY	1333	non-responsive	non-responsive	
	Geotextile	SY	5566	\$non-respo	non-responsive	
	Asphaltic Conc. Pavement (6" stone base, 2" binder, 1" top)	sf	50000	non-respons	non-responsive	
	3 Place Remediated Soil and Demolished Pavement with Dozer (in lifts)	CY	6888	non-respons	non-responsive	
	3 Permieter Erosion & Sediment Control Measures	LS	. 1	non-responsive	non-responsive	
	ALTERNATE 3B CAPITAL COST SUBTOTAL				non-responsive	
	Engineering/QA/Legal Fees (10% of Direct Capital Costs)				non-responsive	
	Contingency (10% of Total Direct Capital Costs)				non-responsive	
	ALTERNATE 3B CAPITAL COST TOTAL				non-responsive	
Opera	tions & Maintenance Costs for 30 years					
1	Inspection/Repair (Annual Site Visit and Inspection)	LS	30	non-responsive	gnon-responsive	
2	Slurryseal 10 times in 30 years over 5,566 SY	SY	55,660	non-respo	non-responsive	
Prese	nt Worth of 30 years of O&M				non-responsive	
TOTAL COST (CAPITAL AND PRESENT WORTH O&M)						



#### Alternative 4: Stabilization and Off-Site Disposal

Unit	Quantity	Unit Cost	Total
LS	1	gnon-responsive	non-responsive
ton	9078	non-resp	non-responsive
		<u> </u>	
ton	9380	non-resp	non-responsive
ton	1413	non-responsive	non-responsive
			non-responsive
			non-responsive
			non-responsive
	LS ton	LS 1 ton 9078 ton 9380	LS 1 \$\frac{1}{100-165}\$ ton 9380

### TABLE 7 RMC Beech Grove CMS Groundwater Alternative #7 Cost Estimate Groundwater Extraction and Treatment

#### Alternative 7: Groundwater Extraction and Treatment

	item	Unit	Quantity	Unit Cost	Total
Direct Capital Costs					
·	la Mobilization/Site Prep	LS	1	non-responsive	non-responsive
1	lb Indirect	LS	1	non-responsive	non-responsiv
	2 Design, Work Plans and Permitting				
	2a Desing Plans and Deliverable	EA	1	non-responsive	non-responsive
	2b Permitting	EA	1	non-responsive	non-responsive
	2c Regulatory Approvals	EA	1	non-responsive	non-responsive
	2d Indirect Costs	LS	1	non-responsive	non-responsive
	3 Well Installation	EA	5	non-responsive	non-responsive
	4 Extraction and Treatment System			<del></del>	
	4a Equipment	LS	1	non-responsive	non-responsive
	4b Installation	LS	1	non-responsive	gnon-responsive
	TOTAL DIRECT CAPITAL COST			·-·	\$535,200
II. Operation and Maintenance (5 yrs)					-
	1 Annual Operating Cost	LS	5	non-responsive	non-responsive
	Present Worth (i = 3.5%, n = 5 years)				non-responsive
	TOTAL COST (CAPITAL AND PRESENT WORTH)				non-responsive



### Deutsche Bank

Deutsche Bank AG New York GLOBAL LOAN OPERATIONS, STANDBY LETTER OF CREDIT UNIT 60 WALL STREET, MS NYC60-0926 NEW YORK, NY 10005

AMENDMENT TO OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. DBS-15867

**NOVEMBER 10, 2009** 

#### BENEFICIARY:

COMMISSIONER
INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT
100 NORTH SENATE STREET
INDIANAPOLIS, IN 46206-6015

#### DEAR SIR OR MADAM:

OUR IRREVOCABLE STANDBY LETTER OF CREDIT IN YOUR FAVOR, AT THE REQUEST AND FOR THE ACCOUNT OF REFINED METALS CORPORATION, 1300 DEERFIELD PARKWAY, BUILDING 200, ALPHARETTA, GEORGIA 30004-8532, IS AMENDED AS FOLLOWS:

THE AMOUNT OF THE LETTER OF CREDIT IS INCREASED BY \$26,249.00 TO \$1,219,379.00.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

VERY TRULY YOURS, DEUTSCHE BANK AG NEW YORK BRANCH

AUTHORIZED SIGNATURE NAME: CHARLES P. FERRIS

TITLE: ASSISTANT VICE PRESIDENT

AUTHORIZED SIGNATURE

TITLE: ASSOCIATE

State Form 4336

#### DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

#### INDIANAPOLIS

\* Not For Public Release

Exemption 5 Deliberative Privileged

#### OFFICE MEMORANDUM

Date:

May 10, 1999

To:

**Becky Eifert** 

**HW Permits Section** 

Thru:

Karyl Schmidt K5 5-11-99

Harold Templin # 5/11/99

From:

Cheryl A. Frischkorn 4 5-10-99

Hazardous Waste Geology Section

Subject:

Hazardous Waste Geology Staff Review of the Closure Plan, Dated March 9, 1999 for

Refined Metals Corporation located in Beech Grove, Marion County, Indiana.

EPA ID number IND 000718130 HW Geology tracking number 1506

Geology Staff have reviewed the Closure Plan (Version 2.0) for Refined Metals and have found the plan to be inadequate as per Compliance Requirement 37 of the Consent Decree in Civil Action Number IP902077C. More specifically, Refined Metals has not established an adequate 40 CFR 265 Subpart F ground water monitoring program at the facility.

Item 37 of the Consent Decree states that the facility shall submit for approval a closure plan for all waste units which meets the requirements of 40 CFR 265, Subparts F and G. Regulations cited in 40 CFR 265.90(a) states that the owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste must implement a ground water monitoring program capable of determining the facility's impact on the quality of ground water in the uppermost aquifer underlying the facility. In section 10.2.4. of the Closure Plan (Version 2.0), the facility states that a separate ground water investigation work plan for the SWMUs will be developed in the future, if necessary. This is not acceptable to the IDEM. Refined Metals Corporation must submit to the IDEM a ground water monitoring plan that meets the requirements of 40 CFR 265 Subpart F. The plan must include but not limited to:

- At least one (1) monitoring well that is installed hydraulically upgradient of the surface impoundment and not affected by the facility {265.91(a)(1)};
- At least three (3) monitoring wells installed hydraulically downgradient of the surface impoundment at the limit of the waste management area {265.91(a)(2)};
- Procedures and techniques to obtain and analyze samples from the installed ground water monitoring system and procedures to obtain ground water level measurements (265.92);
- Procedures to establish background concentrations for the parameters in 265.92(b)(3);



<sup>\*</sup> Not For Public Release (Protected Internal Communication Under IC 15-14-4(b) (6) Or Information Not Obtained Under Authority Of, Nor Required, By State Law).



- Specific procedures to statistically compare background concentrations of the indicator parameters to concentrations detected downgradient of the regulated unit (265.93);
- A ground water assessment outline {265.93(a)}; and
- Specific procedures for record keeping and submitting annual reports (265.94).

Refined Metals must explain why the information in section 10.2.4 was included in the Closure Plan. If the facility feels that data collected for the RCRA Facility Investigation (RFI) can be used for closure requirements, then the facility must present all the pertinent information in the Closure Plan and explain how the data meets the requirements of 40 CFR 265 Subpart G. If the facility does not plan on utilizing the RFI ground water data, then remove section 10.2.4 of the Closure Plan. In addition, Refined Metals must revise the Closure Plan to state that a 40 CFR 265 Subpart F ground water monitoring program will be followed until closure is complete. The Closure Plan must reference the ground water monitoring plan that will be used to fulfill the requirements of 40 CFR 265 Subpart F.

For proper RCRA monitoring well construction details, sampling and analysis requirements, and general QA/QC guidance, refer to the RCRA Ground Water Monitoring Technical Enforcement Guidance Document, September 1986.

cc: Craig Barker, HW Chemistry Section
Doug Griffin, Corrective Action Section
RCRA Ground Water File (4A), Marion County



State Form 4336



#### DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

#### INDIANAPOLIS

Not For Public Release

#### OFFICE MEMORANDUM

Date: April 28, 1999

To:

**Becky Eifert** 

Hazardous Waste Permit Section

Thru: Barry Steward & 4 LA

Ruth Jean

From:

Craig Barker C7 429-99

Hazardous Waste Chemistry Section

Subject: Review of Revised Closure Plan

Refined Metals

Beech Grove, Marion County EPA ID# IND 000718130

The Revised Closure Plan, dated March 9,1999, for Refined Metals has been reviewed and found deficient. My comments are listed below.

#### Section 8.0 Decontamination of Tanks, Equipment, and Structures

- Indicate the exact constituents of concern for the decontamination of the outdoor waste 1. pile surface areas, the indoor waste pile surface areas, and the lagoon. The facility has proposed to analyze soils and/or sediments in these areas for all eight RCRA metals plus antimony. Will the rinsates be analyzed for these same parameters or just lead, cadmium, and antimony?
- 2. Rinsates may be treated on site and discharged to the local POTW if and only if analysis of the rinsates indicate the rinsates are not hazardous. Change Section 9.0 also. All wastes generated from the decontamination of the units will be treated as hazardous waste.

<sup>\*</sup>Not For Public Release (Protected Internal Communication Under IC 5-14-3-4 (b) (6) Or Information Not Obtained Under Authority Of, Nor Required By, State Law.)





3. Tier 1 Default Closure Levels are not appropriate for sites with contaminant source areas larger than 0.5 acre. Sites larger than the default area require a Tier 3 risk assessment to determine a closure level. This may be as simple as substituting site specific variables into the same equations used in the default calculations. For example, substituting a smaller dilution and attenuation factor (DAF) in the soil to ground water partitioning model equation. (See comment #14 in the February 9, 1999 Notice of Deficiency (NOD) and Equation 8-1 in the Risk Integrated System of Closure (RISC) Technical Guidance Manual, dated February 18, 1999). A second option is substituting a calculated dilution factor for the DAF (see equation 8-2 in the Technical Guidance Manual). A third option is proposing other equations, models, or assumptions for calculating the closure levels.

#### Section 10.0 Nature and Extent

4. Include the following definitions of extent in this section (or Section 11.0). Horizontal extent is defined by borings in every lateral direction away from a contaminated boring that meet the Tier 1 residential values at all intervals. Vertical extent for metals is defined by two consecutive intervals that meet background values. Background values are determined by the mean plus two standard deviations from a minimum of four borings. Background borings must be in area unaffected by past hazardous waste operations or by operations of the facility. Samples may be taken in either the same soil horizon(s) or at the same intervals as the investigative samples. Further details are provided in the RISC Technical Guidance Manual.

#### Section 11.0 Sample and Analysis Program

- 5. Remove references to subdividing areas into subareas less than 0.5 acre to allow comparison to Tier 1 closure levels in both Section 11.2 and 11.3.2. It is the entire source area that must be compared to closure levels.
- 6. Provide procedures for measuring soil pH in the field. Field pH usually refers to ground water pH measurements. The February 9, 1999 NOD recommended SW-846 Method 9045C for determining soil pH. This method would usually be performed in a laboratory due to measurement and time requirements.
- 7. Soil samples are discrete grab samples from each interval of a boring. The intervals should not be composited for the random or directed screening sampling. Remove references to compositing soil samples in both Section 11.2 and 11.3.2.
- 8. Sediment samples from the lagoon should be discrete grab samples from intervals. The intervals should be the same as those for soil, depending on the depth of the sediment.



There should be a minimum of four samples, one from each boring location, instead of one composite sample for the lagoon.

- 9. Data deliverables are detailed in the RISC Users Guide, Attachment 9. Minimum requirements are initial calibration results, continuing calibration verification results, blank results including initial and continuing blanks, matrix spike and matrix spike duplicate recoveries, interference check sample results, and laboratory control sample results. See the February 9, 1999 NOD comment # 16. For SW-846 Method 6020 mass spectrometer tuning results and internal standard intensities are also required.
- 10. The 95% upper confidence limit (UCL) must be calculated using all results greater than background for each particular metal.
- 11. One of the data quality objectives of a project is that quantitation limits must be equal or less than the cleanup levels. The quantitation limit reported in Table 11-2 for method 6020 for antimony in an aqueous matrix is 10 μg/l. The Tier 1 Closure Levels and the MCLs for antimony is 6 μg/l. Either ensure that method 6020 can reach the necessary quantitation level or select another method that has an appropriate quantitation level.

cc: 4A File

OECA/ORC/052098

(NOTE: PLEASE DO NOT LEAVE SPACES BLANK -- PUT N/A IF NOT APPLICABLE)

## non-responsive

Exemption 5 Attorney-client

undet



#### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JUN 1 0 1996

OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE

ATTORNEY WORK PRODUCT

## non-responsive

Exemption 5 Attorney-Client

Exemption 5
- Attorney Client
+ Deliberative
Process

#### FOR SETTLEMENT PURPOSES ONLY - NOT ADMISSIBLE IN COURT

CM-29A

Robert N. Steinwurtzel, Esquire Swidler & Berlin 3000 K Street, N.W. Suite 300 Washington, D.C. 20007-5116

RE: United States v. Refined Metals Corporation (Civil Action Number IP 90-2077-C

#### Dear Rob:

This is in response to your May 30 and August 1 letters on behalf of Refined Metals Corporation (RMC). While the following settlement proposal is subject to approval by United States Environmental Protection Agency and Department of Justice management, we hope that it results in an agreement that each side can recommend to their respective principles.

RMC has offered to pay a civil penalty of \$150,000 in equal annual installments over a period of five years. We cannot recommend that offer to our management but would recommend a settlement requiring payment of a civil penalty of \$210,000 in accord with the following schedule and conditions:

Payment Amount	Due Date
\$70,000	30 days after entry of the Consent Decree
\$70,000 plus accrued interest	First anniversary of initial payment
\$70,000 plus accrued interest	Second anniversary of initial payment

Interest on the two installment payments would accrue at the rate of [insert amount]. In the event RMC has not, by no later than April 1, 1996, incurred at least \$500,000 in costs for those activities required by Paragraphs 17 and 19 of the January 10, 1995, Agreed Order with the Indiana Department of Environmental Management (Cause Number A-2521), the entire civil penalty (or any unpaid balance) will be due in one lump sum—on—May 1, 1996.

whichever is earlier.

After your client has considered this settlement proposal, please call either Lee Gelman ((202) 514-5293) or the undersigned. At that time we can discuss the civil penalty, covenant not to sue, and any other remaining issues.

Sincerely yours,

Brian A. Barwick Assistant Regional Counsel

cc:Lee Gelman, DOJ
Jonathon Adenuga, (HRE-8J)
Brent Marable, (ARD-18J)

### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 5

JUL 2 5 1995

"Enforcement Confidential" -





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CHARTERED

3000 K STREET. N.W. SUITE 300
WASHINGTON. D.C. 20007-5116
(202) 424-7500
(202) 424-7643 (lelecopier/lax#) - Suite 300
(202) 424-7645 (telecopier/lax#) - Suite 105
701131 (telex#)

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MAY-30-1995 13:48 FROM SWIDLER & BERLIN TO 913128860747421755# P.02

MAY-30-1995 13:48 FROM SWIDLER & BERLIN TO 913128860747421706# P.03

MAY-30-1995 13:49 FROM SWIDLER & BERLIN

913128860747421706#

P.04



TO

MAY-30-1995 13:49 FROM SWIDLER & BERLIN TO 913128860747421706# P.06



MAY-30-1995 13:50 FROM SWIDLER & BERLIN TO 913128860747421706# P.07

MAY-30-1995 13:50 FROM SWIDLER & BERLIN

TO 913128860747421706#

non-responsive

P.08

MAY-30-1995 13:51 FROM SWIDLER & BERLIN

TO 913128860747421706#

P.09

MAY-30-1995 13:51 FROM SWIDLER & BERLIN

TO 913128860747421706#

P.10



MAY-32-1995 13:51 FROM SWIDLER & BERLIN TO 913128660747421706# P.11

MAY-30-1995 13:52 FROM SWIDLER & BERLIN

TO 913128860747421706#

P.12

MAY-30-1995 13:52 FROM SWIDLER & BERLIN

TO

913128860747421706#

P.13



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5 77 WEST JACKSON BOULEVARD CHICAGO, IL 60604-3590

non-responsive

DEC 1 6 1993

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6.	Are contaminant releases migrating off- site?	Anticipated Final Corrective Measures	
	( ) Yes; Indicate media. concentrations, and level of certainty.  ( ) No ( ) Uncertain	9. If already identified or planned, would final corrective measures be able to be implemented in time to adequately address any existing or short-term threat to human health and the environment?  ( ) Yes ( ) No ( ) Uncertain	
7a.	Are humans currently being exposed to contaminants released from the facility?	Additional explanatory notes:	
	( ) Yes ( ) No ( ) Uncertain	10. Could a stabilization initiative at this facility reduce the present or near-term (e.g., less than two years) risks to human health and	
7b.	Is there a potential for human exposure to the contaminants released from the facility over the next five to 10 years?  ( ) Yes ( ) No	the environment?  ( ) Yes ( ) No ( ) Uncertain	
	( ) Uncertain	Additional explanatory notes:	
8a.	Are environmental receptors currently being exposed to contaminants released from the facility?  ( ) Yes ( ) No ( ) Uncertain	11. If a stabilization activity were not begun, would the threat to human health and the environment significantly increase before final corrective measures could be implemented?	
8b.	Is there a potential that environmental receptors could be exposed to the contaminants released from the facility over the next five to 10 years?  ( ) Yes	( ) Yes ( ) No ( ) Uncertain  Additional explanatory notes:	
	( ) No ( ) Uncertain		

Technical Ability to Implement Stabilization Activities	15. Has the RFI, or another environmental investigation, provided the site characterization and waste release data		
In what phase does the contaminant exist under ambient site conditions?	needed to design and implement a stabilization activity?		
( ) Solid ( ) Light non-aqueous phase liquids (LNAPLs) ( ) Dense non-aqueous phase liquids (DNAPLs) ( ) Dissolved in ground water or surface water ( ) Gaseous ( ) Other	<ul> <li>( ) Yes</li> <li>( ) No</li> <li>If No, can these data be obtained faster than the data needed to implement the final corrective measures?</li> <li>( ) Yes</li> <li>( ) No</li> </ul>		
Are one or more of the following major chemical groupings of concern at the facility?	Timing and Other Procedural Issues Associated with Stabilization		
<ul> <li>( ) Volatile organic compounds (VOCs) and/or semi-volatiles</li> <li>( ) Polynuclear aromatics (PAHs)</li> <li>( ) Pesticides</li> <li>( ) Polychlorinated biphenyls (PCBs) and/or dioxins</li> <li>( ) Other organics</li> <li>( ) Inorganics and metals</li> <li>( ) Explosives</li> <li>( ) Other</li> </ul>	<ul> <li>16. Can stabilization activities be implemented more quickly than the final corrective measures?</li> <li>( ) Yes</li> <li>( ) No</li> <li>( ) Uncertain</li> <li>Additional explanatory notes:</li> </ul>		
<ul> <li>14. Are appropriate stabilization technologies available to prevent the further spread of contamination, based on contaminant characteristics and the facility's environmental setting? [See Attachment A for a listing of potential stabilization technologies.]</li> <li>( ) Yes; Indicate possible course of action.</li> </ul>	17. Can stabilization activities be incorporated into the final corrective measures at some point in the future?  ( ) Yes ( ) No ( ) Uncertain  Additional explanatory notes:		
( ) No; Indicate why stabilization technologies are not appropriate; then go to Question 19.			

Con	clusio	n
		facility an appropriate candidate for activities?
	K) Explai	Yas No, not feasible No, not required n final decision, using additional
	sneet:	s if necessary.



## **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 5 77 WEST JACKSON BOULEVARD CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

JUN 16 1983

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## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

### **REGION 5**

## 77 WEST JACKSON BOULEVARD CHICAGO, IL 60604-3590

JUN 8 1993

Joanne Callahan U.S. EPA 5741 Leverett Ct. #373 Alexandria, VA 22311

Lee Gelman
U.S. Department of Justice
Environment and Natural
Resources Division -- EES
1425 New York Ave., N.W.
Washington, D.C. 20005

Re: <u>U.S. v. Refined Metals</u>

Dear Joanne, Lee, Gary, and Leslie:

Enclosed you will find a new draft of the proposed consent decree in <u>U.S v. Refined Metals</u>. This draft is for comment by the Plaintiff, the United States, and the proposed Intervening Plaintiff, the State of Indiana.

You will recall that we reached substantial agreement on a settlement with Refined Metals at our meeting in Indianapolis on April 29. EPA review of the penalty issue and agreement on specific language addressing certain federal and state compliance issues remain. Since the proposed settlement would address both state and federal enforcement actions, this draft attempts to address the State's role where the State would intervene just prior to or concurrent with the lodging of a signed consent decree in federal court.

Please contact us with your comments as soon as possible, so that we may provide the draft to the Defendant expeditiously. We understand that the we are under an obligation to report soon to the Court that settlement is imminent or to request a trial date.

Sincerely yours,

Thomas C. Jacobs

Assistant Regional Counsel

Brian Barwick

Assistant Regional Counsel

Gary Jonesi (LE-1348)

Office of Attorney General

Indianapolis, IN 46204

20460

401 M. St., S.W.

Washington, D.C.

Leslie Williams

219 Statehouse

U.S. EPA

cc: Jon Adenuga
Brent Marable

Printed on Recycled Paper

\* 6/7/93 This draft incorporates positions arrived at through negotiations and correspondence since 10/28/92. THIS IS A DRAFT FOR COMMENT BY USEPA REGION V, USEPA HQ, DOJ, AND IDEM. A new version for the Defendant will be prepared after comments. \*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\* [IDEM TO ADVISE U.S. EPA ON ANY CHANGES IN REFERENCES TO STATE STATUTES/REGS HEREIN.] UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA INDIANAPOLIS DIVISION UNITED STATES OF AMERICA, Plaintiff, STATE OF INDIANA, by its agent Indiana DEPARTMENT OF ENVIRONMENTAL MANAGEMENT. Intervening Plaintiff, CIVIL ACTION NO. IP902077C v. [JUDGE \_\_\_\_ REFINED METALS CORPORATION,

## CONSENT DECREE

Defendant.

WHEREAS, Plaintiff, United States of America, on behalf of the United States Environmental Protection Agency (hereinafter "U.S. EPA"), filed its Complaint on November 21, 1990 in this action against Defendant, Refined Metals Corporation (hereinafter "Defendant" or "RMC"), pursuant to the Resource Conservation and Recovery Act, as amended (hereinafter "RCRA"), 42 U.S.C. §§ 6928(a), (g), and (h) and the Clean Air Act (hereinafter "CAA"), 42 U.S.C. § 7413(b), alleging that Defendant violated requirements of RCRA and the CAA and regulations promulgated thereunder, at its facility in Beech Grove, Indiana;

WHEREAS, The State of Indiana, by its agent Indiana Department of Environmental Management ("IDEM"), intervened in this action as a party plaintiff;

WHEREAS, Plaintiff and Defendant, having recognized that settlement of this matter is in the public interest, have agreed to the entry of this Consent Decree in order to compromise and settle the claims stated in the Complaint against the Defendant without further litigation;

NOW THEREFORE, without adjudication of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

## I. JURISDICTION AND VENUE

The Court has jurisdiction over the parties and the subject matter of this action under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345, and 1355. The Complaint states a cause of action upon which the Court can grant relief against Defendant, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). Venue is proper under Section 3008(a) of RCRA, 42 U.S.C. § 7413(b), and 28 U.S.C. § 1391(b), because the defendant's facility is located in this district and because the violations occurred in this district.

## II. STIPULATIONS

Solely for the purpose of this Consent Decree, and without any admission of liability by Defendant, the parties stipulate to the following:

- A. Refined Metals Corp. is a corporation organized and existing under the laws of the State of Delaware.
- B. Defendant is the owner and operator of a lead reclaiming facility located at 3700 South Arlington Avenue, Beech Grove, Indiana (hereinafter "Refined Metals facility" or "facility"). One of the principal aspects of operations at the facility involves secondary lead smelting of non-ferrous metals and alloys, principally materials containing lead. As the owner and operator of the Refined Metals facility, Defendant is required to comply with this Consent Decree, RCRA, the CAA, and regulations promulgated thereunder.
- C. The Refined Metals facility is a facility that contains hazardous waste management units as defined at 40 CFR § 260.10.

- D. Pursuant to 42 U.S.C. § 6925(e)(1), on November 19, 1980, Defendant obtained "interim status" to operate its hazardous waste piles, in the manner set forth in Part A of its RCRA permit application, pending the issuance of a final RCRA operating permit. As a result of Defendant's alleged failure to comply with Section 3005(e)(2) of RCRA, 42 U.S.C. 6925(e)(2), on November 8, 1985, pursuant to 42 U.S.C. § 6925(e)(2), the facility's waste piles allegedly lost "interim status." Defendant denies these allegations.
- E. Defendant's facility includes the following units regulated under RCRA Subtitle C: a series of indoor and a series of outdoor waste piles used to store batteries and lead-bearing wastes, and a surface impoundment that receives effluent from the on-site wastewater treatment unit.
- F. E.P. toxicity analyses conducted by U.S. EPA on soil samples collected at the facility indicate that the soil samples are characteristic for lead and cadmium.
- G. Hazardous constituents (lead and cadmium) may further migrate from the facility into the environment in the following potential pathways:
  - 1. migration of hazardous constituents into an aquifer in down-gradient areas that may obtain water supplies from that aquifer; and
  - 2. migration of hazardous constituents into the air.
- H. On August 18, 1982, U.S. EPA granted to the State of Indiana Phase I interim authorization under Section 3006 of RCRA, 42 U.S.C. § 6926, to carry out certain portions of the RCRA hazardous waste management program in Indiana. On January 31, 1986, Indiana received final authority to promulgate such regulations presently codified at 329 IAC Article 3.1, previously codified at 329 Article 3, 320 IAC Article 3, and 320 IAC Article 4 and 4.1.
- I. The federally approved State regulations are enforceable by the United States pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). However, the Indiana Department of Environmental Management ("IDEM") has the authority to approve or disapprove any closure plan under this Decree, so long as Indiana is an authorized state, although U.S. EPA may comment on and participate in the review of such plans.
- J. Section 109 of the Clean Air Act, 42 U.S.C.§ 7409, requires U.S. EPA to promulgate national ambient air quality standards ("NAAQS") for air pollutants in order to protect the public health and welfare.

- K. In order to achieve the NAAQS within established time limits, Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to U.S. EPA for approval a state implementation plan ("SIP") which contains procedures for regulations for reducing emissions from sources of air pollution within the State. Upon approval, a SIP is federally enforceable.
- L. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), states that the Administrator of U.S. EPA shall commence a civil action for an injunction or for the assessment of a civil penalty of up to \$25,000 per day of violation, or both, whenever any person operating a major stationary source violates any requirement of an applicable SIP and such violation continues for more than 30 days after the Administrator notified such person of a violation.
- M. On or about July 16, 1982, U.S. EPA approved 325 IAC 6-1-12, which then became part of the Indiana SIP. See 47 Fed. Reg. 30972. The rule (subsequently recodified at 325.1 and 326 IAC) limits emissions of total suspended particulate matter from Refined Metals' blast furnace to .003 grains per dry standards cubic foot.
- N. On or about April 19, 1988 U.S. EPA approved 325 IAC 15-1, part of the Indiana SIP. <u>See</u> 53 Fed. Reg. 12896. The rule (subsequently recodified at 325.1 and 326 IAC) limits lead emissions from Refined Metals' three baghouse stacks as follows:

M-1 stack 1.132 pounds/hour M-2 stack 0.015 pounds/hour M-3 stack 0.005 pounds/hour

O. The federally-approved Indiana SIP, including 326 IAC 6-1-12 and 326 IAC 15-1, is the "applicable implementation plan" within the meaning of Section 113(b) of the Act, 42 U.S.C. § 7413(b), that governs operations at the RMC facility.

## III. PARTIES BOUND

- A. Each signatory to this Decree on behalf of Defendant certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind Defendant to this Decree.
- B. This Consent Decree shall apply to and be binding upon the United States, the State of Indiana, and the Defendant, its agents, officers, directors, employees, successors, assigns, and all persons, firms, entities and corporations acting under, through, or for it, or in active concert or participation with it. Further, the Defendant shall be responsible for the acts of any of its agents, officers, directors, employees, successors, assigns, contractors, and consultants, which violate or cause the

Defendant to violate the terms hereof. In the event that Defendant proposes to sell or transfer the real property and/or any operation subject to this Consent Decree, Defendant, prior to transfer of such ownership or operation, shall notify each successor in interest of the existence and terms of this Decree, and shall notify U.S. EPA, IDEM, the United States Attorney for the Southern District of Indiana, and the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, in writing, of such proposed sale or transfer, at least two weeks in advance thereof, at the addresses set forth in Section XI.

This Section does not relieve Defendant of its obligation to comply with the notice requirements at 40 CFR § 270.72.

C. Defendant shall provide copies of this Consent Decree to all representatives and agents responsible for implementing any of the work of this Decree.

### IV. DEFINITIONS

- A. Unless otherwise stated, all terms used in this Consent Decree shall have the same meaning as used in RCRA and in the regulations promulgated thereunder, at 40 CFR Parts 260 through 271, and 320 IAC Article 3, and in the CAA, 42 U.S.C. § 7413(b), 42 U.S.C. § 7602(e), 42 U.S.C. § 7411(a)3-5, and 325 IAC 6-1-12 and 325 IAC 15-1.
- B. "Refined Metals facility," "RMC facility," and "facility" mean the Facility, as defined at 40 CFR 260.10 and 329 IAC 3-1-7, located at 3700 South Arlington Avenue, Beech Grove, Indiana.
- C. "Responsible agent" means a corporate officer, such as a president, secretary, treasurer, or vice-president with authority to sign and approve, as defined in 40 CFR 270.11.
- D. "Waste piles" include all indoor and outdoor waste piles used for the storage of hazardous waste (which includes spent lead-acid batteries) that exist, may have existed, or may be created at the RMC facility.

### V. STATEMENT OF PURPOSE

The objectives of this Decree are for the Defendant to: (1) effectuate the closure of Defendant's indoor and outdoor waste piles by submitting a closure plan, and post-closure plan if applicable, to IDEM for approval and implementing the plan(s) as approved; (2) complete a RCRA Facility Investigation ("RFI") to fully determine the nature and extent of the presence of any release or the potential for future releases of hazardous waste

and/or hazardous constituents from the RMC facility; (3) complete a Corrective Measures Study ("CMS") to identify and evaluate alternatives regarding the nature and extent of corrective measures necessary to prevent or mitigate any migration or release of hazardous wastes and/or hazardous constituents from the RMC facility; (4) implement the corrective measures selected by U.S. EPA; (5) compromise and settle the claims stated in the Complaint against the Defendant without further litigation; and (6) to achieve and maintain compliance with the Indiana SIP in accordance with Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

### VI. COMPLIANCE REQUIREMENTS

- Hazardous waste placement, storage, treatment and disposal. Defendant shall cease the placement, storage, treatment and disposal of hazardous waste in any hazardous waste management unit unless and until such activity is permitted by IDEM. Defendant shall submit Revised Part A and Revised Part B permit applications within \_\_\_\_\_ days of lodging of this Decree. Defendant may only place, store, treat and dispose of hazardous waste in accordance with its Revised Part A and B permit applications until a final permit decision by IDEM. a final permit decision, Defendant shall operate in accordance with its permit.
  - Effective immediately upon signing of this Consent Decree, Defendant shall not add, place, treat, store, or dispose of any hazardous waste material in the existing waste piles, unless and until such activity is permitted by IDEM. identifying the existing waste piles is attached as Exhibit G.
  - 2. Immediately upon lodging of this Consent Decree, Defendant shall manage the existing waste piles at the facility so as to prevent and control wind dispersal, leachate creation, and run-on or run-off of leachate, as required by 40 CFR 265.251 and 265.253, and 329 IAC 3-26-2 and 3-26-4.
  - Effective immediately upon lodging of this З. Consent Decree, any and all new hazardous waste generated at the facility must be stored properly and in accordance with RCRA, 40 CFR 268.50.

### В. Closure.

rate existing indoor Within sixty (60) days of lodging of this Consent Decree, Defendant shall submit to IDEM for approval a closure plan for all waste piles and the surface impoundment [SEE \*] which meets the

requirements of 40 CFR Part 265, Subpart G, and 329 IAC 3-21, and shall concurrently submit a copy thereof to U.S. EPA. Within thirty (30) days of being notified of any deficiencies in the plan, Defendant shall submit to IDEM and U.S. EPA a revised closure plan which corrects any deficiencies identified by IDEM. Within ten (10) days of receipt of IDEM's approval of the closure plan, Defendant shall implement the closure plan in accordance with the schedule contained therein.

\*[SURFACE IMPOUNDMENT: On the 5/7/93 call, RMC stated that it will attempt to make showings of clean closure for the s.i. (such as by sampling through lateral boring) and, if they cannot, we will add/retain language regarding closure requirements, financial assurance and liability requirements.]

> Within sixty (60) days of receipt of IDEM's approval of the closure plan, Defendant shall, as required by 40 CFR 265.112 and 329 IAC 3-21-3, 7 maintain at the facility a full facility closure plan, and, if necessary, post-closure plan, which D provides for closure of all hazardous waste management units not included in the closure plan under Section VI.B.1. above.

刁井小 Within sixty (60) days of completion of closure of any hazardous waste management unit at the facility, Defendant shall submit to U.S. EPA and IDEM certifications of closure for such waste pile or other hazardous waste unit, from the facility owner or operator and an independent engineer, in accordance with 40 CFR 265.115 and 329 IAC 3-21-6.

## Financial Assurance and Liability Coverage Requirements.

1. Within-sixty (60) days of lodging of this Consent Decree and simultaneously with submittal of the closure and post-closure plans pursuant to Section VI.B above, the Defendant shall submit to U.S. EPA and IDEM certification that it has established financial assurance mechanisms for closure and post-closure care at the facility which meet the requirements of 40 CFR 265.143 and 329 IAC 3-22-4. The certification shall include a description of the financial assurance mechanism.

Within sixty (60) days of lodging of this Consent Decree and simultaneously with submittal of the closure and post-closure plans pursuant to

Section VI.B above, the Defendant shall submit to U.S. EPA and IDEM certification that it has established liability coverage for the facility which meet the requirements of 40 CFR 265.147(a) and 329 IAC 3-22-24(a). The certification shall include a description of the liability coverage. The Defendant shall maintain such liability coverage for as long as required under 40 CFR Part 265 Subpart H, and 329 IAC 3-22.

- 3.1. Defendant will establish and maintain compliance with financial assurance and liability coverage requirements as necessary as determined by IDEM.
- 2. Defendant agrees that unless and until it meets the 40 C.F.R. § 265 Subpart H and IAC § ?? financial assurance requirements for all closure and post-closure activities at its Beech Grove, facility, Defendant shall not make payment of any kind on loans of \$[insert amount] extended to Defendant by Richard Swain on [insert transaction dates].

Mangace Hous.

D. Corrective Action.

Within forty-five (45) days of the lodging of this Consent Decree, Defendant shall submit to U.S. EPA a work plan for a RCRA Facility Investigation ("RFI Work Plan"). RFI Work Plan shall be subject to approval by U.S. EPA and shall address all activities outlined in the Scope of Work attached as The RFI Work Plan shall be designed to determine the presence, magnitude, extent, and direction and rate of movement of any hazardous wastes and hazardous waste constituents, both within and beyond the facility boundaries, which wastes or constituents originated from hazardous waste management units or solid waste management units at the facility. The RFI Work Plan shall set forth in detail the manner in which Defendant shall determine: (1) the presence or absence of hazardous wastes and hazardous constituents on and off Defendant's facility; (2) the nature and extent, and the rate of movement of contamination on and off Defendant's facility; (3) the possible routes of migration of hazardous wastes and hazardous constituents on and off Defendant's facility, including characterization of the geology and hydrology of the facility which delineates possible routes of migration; (4) the extent and potential for migration of hazardous wastes and hazardous constituents through each of the environmental media; and (5) corrective measure alternatives needed to remediate the observed and potential contamination originating from the facility.

- 2. In accordance with Exhibit A, the RFI Work Plan shall include:
  - a. a Project Management Plan;
  - b. a Data Collection Quality Assurance Plan with supporting graphics and flow charts;
  - c. a specific Data Management Plan for each site/source or interpretation with cross reference;
  - d. a Health and Safety Plan;
  - e. a schedule for implementation of the RFI Work Plan, including preparation and submission of preliminary and final reports to U.S. EPA; and
  - f. a Public Involvement Plan.
- 3. Upon review of the RFI Work Plan, U.S. EPA shall inform Defendant that the RFI Work Plan has been approved, approved as modified by U.S. EPA, or disapproved. Upon receipt of U.S. EPA approval or approval as modified of the RFI Work Plan, Defendant shall conduct the RFI in accordance with the RFI Work Plan, including any U.S. EPA modifications thereto, and the schedule contained therein. In the event of U.S. EPA disapproval, Defendant shall resubmit within thirty (30) days a RFI Work Plan that meets U.S. EPA requirements, including all modifications requested and correcting any deficiencies noted by U.S. EPA.
- 4. Defendant shall submit draft and final RFI reports to U.S. EPA in accordance with the schedule contained in the approved RFI Work Plan. Within sixty (60) days after U.S. EPA approval of the final RFI report, Defendant shall submit to U.S. EPA a work plan for a Corrective Measures Study ("CMS Work Plan"), which shall inform the U.S. EPA of how Defendant will (a) develop and evaluate potential corrective measures for remediating contamination at or from the facility so as to protect human health and the environment and (b) recommend, where appropriate, any corrective measures or alternatives to be taken at the facility. The CMS Work Plan shall be prepared in accordance with Exhibit B.
- 5. Upon review of the CMS Work Plan, U.S. EPA shall inform Defendant that the CMS Work Plan has been approved, approved as modified by U.S. EPA, or disapproved. Upon receipt of U.S. EPA approval or approval as modified of the CMS Work Plan, Defendant shall conduct the CMS in accordance with the CMS Work Plan, including any U.S. EPA modifications thereto, and the

schedule contained therein. In the event of U.S. EPA disapproval, Defendant shall resubmit within thirty (30) days a CMS Work Plan that meets U.S. EPA requirements, including all modifications requested and correcting any deficiencies noted by U.S. EPA.

- 6. Defendant shall provide draft and final CMS reports to U.S. EPA in accordance with the schedule contained in the approved CMS Work Plan. Defendant shall complete the CMS and shall submit to U.S. EPA the final report on the Corrective Measures Study within eight (8) months of the U.S. EPA approval of the CMS Work Plan, exclusive of periods of U.S. EPA review.
- E. <u>Corrective Measure Implementation and Public</u> Comment and Participation.
- 1. Upon approval by U.S. EPA of a CMS Final Report, U.S. EPA shall make both the RFI Final Report and the CMS Final Report and a summary of U.S. EPA's proposed corrective measure(s) and U.S. EPA's justification for selecting the proposed corrective measure(s) available to the public for review and comment for at least thirty (30) days.
- 2. Following the public review and comment period, U.S. EPA shall notify the Defendant in writing of the corrective measure(s) selected by U.S. EPA. If the corrective measure(s) recommended in the CMS Final Report is not the corrective measure selected by U.S. EPA after consideration of public comments, U.S. EPA shall inform the Defendant in writing of the reasons for that decision and the Defendant shall modify the RFI/CMS based upon public comment if directed by U.S. EPA to do so.
- 3. The Administrative Record supporting the selection of the corrective measure will be available for public review at \_\_\_\_\_.
- 4. U.S. EPA's written notification shall include a Corrective Measures Implementation Scope of Work ("CMI Scope of Work") which shall become an enforceable part of this Consent Decree and be fully incorporated herein as an attachment hereto.
- 5. No later than sixty (60) days after receiving the foregoing written notification, Defendant shall submit to U.S. EPA a Corrective Measures Implementation Program Plan ("CMI Program Plan"), which shall be designed to facilitate the design, construction, operation, maintenance and monitoring of the corrective measure(s). In accordance with the CMI Scope of Work, Exhibit C to this Decree, the CMI Program Plan shall also include:
  - a. a Program Management Plan;

- b. a Community Relations Plan;
- c. Design Plans and Specifications;
- d. an Operation and Maintenance Plan;
- e. a cost estimate;
- f. a schedule for implementation of the CMI Program Plan, including preparation and submission of preliminary and final reports to U.S. EPA;
- g. a Health and Safety Plan; and
- h. a Construction Quality Assurance Plan.
- 6. Upon review of the CMI Program Plan, U.S. EPA shall inform Defendant that the CMI Program Plan has been approved, approved as modified by U.S. EPA, or disapproved. Upon receipt of U.S. EPA approval or approval as modified of the CMI Program Plan, Defendant shall conduct the CMI in accordance with the CMI Program Plan, including any U.S. EPA modifications thereto, and the schedule contained therein. In the event of U.S. EPA disapproval, Defendant shall resubmit within thirty (30) days a CMI Program Plan that meets U.S. EPA requirements, including all modifications requested and correcting any deficiencies noted by U.S. EPA.
- 7. Within thirty (30) days after Defendant believes it has completed implementation of the selected corrective measure(s), Defendant shall submit a CMI Final Report to U.S. EPA. Upon review of CMI Final Report, U.S. EPA shall inform Defendant that the CMI Final Report has been approved, approved as modified by U.S. EPA, or disapproved. In the event of U.S. EPA disapproval, Defendant shall resubmit within thirty (30) days a CMI Final Report that meets U.S. EPA requirements, including all modifications requested and correcting any deficiencies noted by U.S. EPA.
- F. Financial Guarantee for Corrective Action. Based on the remedy option selected by U.S. EPA, Defendant shall prepare a cost estimate for the corrective action and shall provide sufficient financial guarantee(s) to fund the corrective action for the implementation of the selected remedy at the Beech Grove facility.
  - G. Agency Review and Approval of Document Submittals.
- 1. In accordance with the requirements of Exhibit A and any RFI/CMS/CMI work or program plan requiring monthly reports, Defendant shall submit where required to U.S.

EPA a report no later than fifteen (15) days after the end of each monthly reporting period beginning with the end of the first full month following the effective date of this Consent Decree which at a minimum shall do the following:

- a. describe the actions which have been taken toward achieving compliance with the Consent Decree;
- b. summarize the results of sampling and tests and other data received by the Respondent;
- c. discuss all tasks and actions completed during the past month, as well as such actions and tasks that are scheduled for the next month; and
- d. identify any other elements not completed as required and any problems or anticipated problems. These reports are to be submitted to the U.S. EPA as required by Exhibit A and any 'RFI/CMS/CMI work or program plan requiring monthly reports.
- 2. In addition to the reports required by Exhibit A and any RFI/CMS/CMI work or program plan requiring monthly reports, the Defendant shall provide draft and final plans or reports to U.S. EPA as required by and in accordance with the terms of this Consent Decree and any plan or report approved thereunder.
- 3. The reports required under Sections VI.G.1 and VI.G.2 shall include a certification of compliance or noncompliance, as applicable, with any action required by this Decree or plan to be taken in the thirty-day period covered by the report. If any required action has not been taken or completed in accordance with the Decree or plan, Defendant shall notify U.S. EPA of the reasons for the failure, the projected date for completion, and the probability of meeting the next requirement in the schedule. The notification does not excuse any noncompliance unless relief is afforded in accordance with Section XXI (Force Majeure). If the compliance status changes with respect to any requirements of the Consent Decree, Defendant shall also notify U.S. EPA in writing of the change in compliance status.
- 4. By the 15th day of January, April, July, and October of each year following the lodging of this Consent Decree and until termination of this Consent Decree in accordance with Section XXV of this Decree, Defendant shall submit to U.S. EPA a financial statement prepared by a certified public accountant which includes at least the following information:

a. the amounts of any and all debts due Richard Swain:

b. the amounts, if any, paid to Swain by the company in satisfaction of those debts during the prior quarter; and

c. the market price for lead, which "market price" is the price relied upon by Defendant in business planning.

d. [WHAT OTHER INFORMATION DO WE REQUIRE TO TRACK RMC'S AGREEMENT NOT TO REPAY SWAIN PRIOR TO SATISFACTION OF CERTAIN OBLIGATIONS UNDER THE DECREE?]

5. Defendant shall submit to U.S. EPA and IDEM a notice sixty (60) days prior to any material change in intent with regard to operation of the facility.

46 All submittals made under this Section shall be signed by a responsible agent of the facility under oath and shall include the following certification statement:

"I certify under penalty of perjury that the information contained in or accompanying this (submission) (document) is, to the best of my knowledge after thorough investigation, true, accurate, and complete."

- H. Facility Compliance with RCRA. Defendants shall comply with all applicable federal and state requirements under RCRA and regulations promulgated thereunder, except that with respect to the requirements set forth below, the schedules set forth therein shall apply. Upon a final permit decision, Defendant shall operate in accordance with its permit.
  - Within thirty (30) days of lodging of this Consent Decree, Defendant shall develop and implement an inventory system that tracks all hazardous waste, and all material for reclamation, that is received, generated, or stored, at the facility, from the time of receipt or generation at the facility to the time of ultimate disposition. This inventory system shall include a container labelling and tracking system. Defendant is not required to track each individual spent lead-acid battery, provided that Defendant: (a) tracks all such batteries from arrival to breakage, and (b) has labelled all containers. [IDEM IS REVIEWING THIS] All information required under this paragraph shall be maintained in the facility's operating record, as required under 40 CFR 265.73 and 329 IAC 3-19-4.

- 2. To the extent not provided under Section VI.A.1. above, within thirty (30) days of lodging of this Consent Decree, Defendant shall submit to IDEM an inventory of -- (a) all hazardous waste, and (b) all material for reclamation -- that is currently at the facility, or which Defendant, since November 19, 1980, has treated, stored, or disposed of in a hazardous waste management unit at the facility. The inventory shall, based on best information, include the nature and volume of the waste or material, the type of activity (treatment, storage, disposal), the manner in which the waste or material is or was handled (e.g., container, waste pile), and a diagram identifying the location of the waste or material.
- 3. Effective immediately upon lodging of this Consent Decree, Defendant shall not accept from off-site or manage any hazardous waste except as specified in Part A of the permit application for the facility.
- 4. Effective immediately upon lodging of this Consent Decree, Defendant shall not accept hazardous waste at the facility or ship any hazardous waste from the facility unless it is manifested in accordance with the requirements of 40 CFR Part 262, 329 IAC 3-8, unless it is exempted under 40 CFR 266.80.
- 5. [RMC WILL REVIEW THIS SECTION] Effective immediately upon lodging of this Consent Decree, Defendant shall not (i) accept at the facility from off-site any material for reclamation or for storage prior to reclamation or treatment, or (ii) crack batteries at the facility, except under a U.S. EPA-approved plan to be submitted by Defendant and to include the following:
  - a. the proposed storage location and method for cracking batteries;
  - b. safeguards to prevent the release of acid or other hazardous constituents into the environment; and
  - c. the method for collection, storage, and neutralization of acid, in accordance with the requirements of RCRA.
- 6. Effective immediately upon lodging of this Consent Decree, as required by 40 CFR 265.31 and

329 IAC 3-17-2, Defendant shall maintain and operate the facility to minimize the possibility of fire, explosion, or any unplanned release of hazardous waste or hazardous constituents to air, soil, or surface water, which could threaten human health or the environment.

- 7. Effective immediately upon lodging of this Consent Decree, Defendant shall develop and submit a detailed waste analysis plan and maintain it on file at the facility. 329 IAC 3-16-4.
- 8. Effective immediately upon lodging of this Consent Decree, Defendant shall test slag generated at the facility in accordance with the approved waste analysis plan. Defendant shall maintain the results of these analyses in the facility's operating record. 329 IAC 3-19-4. [IDEM WILL REVIEW THIS SECTION]
- 9. Effective immediately upon lodging of this Consent Decree, Defendant shall notify the Indiana Solid Waste Management Board of any present or future storage of hazardous waste in containers and/or in waste piles. 329 IAC 3-2-1.
- Effective immediately upon lodging of this Decree, Defendant shall regularly conduct inspections of the entire facility in accordance with 40 CFR 265.15(a) and 329 IAC 3-16-3, to discover deterioration of containers or equipment, releases, malfunctions in monitoring, safety, or emergency equipment, and any other condition or event which may cause or lead to the release of hazardous waste or hazardous constituents into the environment or a threat to human health or the environment. Within thirty (30) days of lodging of this Consent Decree, Defendant shall submit to IDEM for review and approval an inspection plan and schedule for the facility. Defendant shall modify the inspection plan and schedule in accordance with any comments received from IDEM. Within thirty (30) days of approval, the Defendant shall implement the approved plan. Defendant shall record observations from inspections as required by 40 CFR 265.15(b) and (d) and 329 IAC 3-16-6, and shall, immediately upon detection, correct any problems or potential problems, as required by 40 CFR 265.15(c) and 329 IAC 3-16-6.
- 11. Effective immediately upon lodging of this Consent Decree, Defendant shall comply with

training requirements at 40 CFR 265.16(a), (b), and (c), and 329 IAC 3-16-6 and 3-16-7, and maintain at the facility a written description of personnel training records and documents, as required by 40 CFR 265.16(d) and (e), and 329 IAC 3-16-6.

- 12. Within thirty (30) days of lodging of this Consent Decree, Defendant shall develop and file the contingency plan required to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or nonsudden release of hazardous waste constituents to air, soil or surface water. 329 IAC 3-18.
- 13. Within thirty (30) days of lodging of this Consent Decree, Defendant shall submit to IDEM certification that the facility contains all equipment required under 40 CFR 265.32 and 329 IAC 3-17-3, an inventory of the equipment, and a diagram of the facility that shows the location of each piece of equipment.
- 14. Within thirty (30) days of lodging of this Consent Decree, Defendant shall provide for facility security, in accordance with the requirements of 40 CFR 265.14 and 329 IAC 3-16-5, including the requirement to maintain a fence in good repair.
- 15. Within sixty (60) days after the lodging of this Consent Decree, Defendant shall maintain at the facility, and make available to IDEM upon request, a written operating record which contains the information required under 40 CFR 265.73 and 329 IAC 3-19-4, and any other information required to be included pursuant to this Consent Decree.
- 16. Effective immediately upon lodging of this Consent Decree, Defendant shall comply with all the applicable groundwater monitoring requirements of RCRA, 40 CFR 265 Subpart F.

#### I. Facility Compliance With CAA.

[THREE OUTSTANDING ISSUES: (1) lead SIP approval -- in RMC's hands; (2) TSP -- RMC has submitted modification to IDEM; (3) SO2 limits -- RMC submitted 5/3/93 letter to IDEM; IDEM preparing response]

- 1. Defendant shall establish and maintain compliance with the CAA and the Indiana SIP within twelve months of lodging of this consent Decree.
- 2. During the twelve months following the lodging of the Consent Decree, Defendant shall comply with Section 2(a)(1) of 326 IAC 15-1-2, attached as Exhibit E.
- 3. Defendant shall submit monthly CEM (continuous emission monitoring) reports for sulfur dioxide and opacity for stack M-1 to:

Brent Marable U.S. EPA Region V, 5AR Air and Radiation Division 77 W. Jackson Chicago, IL 60604

Data shall be submitted for twelve months. Each monthly data submission must be received within fifteen days after the end of each month. Data shall be in accordance with the requirements of 40 CFR Part 60.13. Defendant shall begin its CEM data submissions within 45 days of the lodging of this Consent Decree.

#### VII. ADDITIONAL WORK.

- A. Consistent with the objective of this Consent Decree, U.S. EPA may determine that certain additional tasks, including investigatory work and engineering evaluation, are necessary in addition to those required by this Decree and the plans and studies required thereby. If U.S. EPA determines that such additional work is necessary, U.S. EPA shall request in writing that Defendant perform the additional work and shall specify the basis and reasons for U.S. EPA's determination that the additional work is necessary.
- B. Such requests for additional work shall not be incompatible or inconsistent with the reports previously approved by U.S. EPA or with closure activities previously approved by IDEM, unless it appears at the time the additional work is requested that the previous work may not be fully protective of human health or the environment. The Defendant shall have the opportunity to meet with U.S. EPA to discuss the additional work U.S. EPA has requested and propose alternatives.
- C. Defendant shall commence any additional work required under this section within thirty (30) days of receipt of

U.S. EPA's request, and shall complete such work in accordance with an EPA-approved schedule.

#### VIII. SUPERVISION BY A PROFESSIONAL ENGINEER.

All work performed pursuant to this Consent Decree shall be under the direction and supervision of a professional engineer and/or geologist with expertise in hazardous waste site investigation and remediation. Within seven (7) days of the effective date of this Consent Decree, or their retention, whichever is later, Defendant shall notify U.S. EPA in writing of the name, title, and qualifications of the engineer or geologist, and of any contractors or subcontractors and their personnel to be used in carrying out the terms of this Consent Decree. U.S. EPA retains the right to require Defendant to replace any personnel it does not deem qualified to perform the work.

#### IX. PROJECT COORDINATORS.

- A. On or before the effective date of this Consent's Decree, U.S. EPA and Defendant shall designate Project Coordinators. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Decree. To the maximum extent possible, communications between U.S. EPA and the Defendant, and all documents, reports, approvals and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Decree, shall be directed through the Project Coordinators.
- B. Each party shall provide seven (7) days written notice of a change of its Project Coordinator.
- C. The U.S. EPA Project Coordinator shall have the authority to halt any RFI/CMS work if, in his or her opinion, the work poses a significant threat to human health and the environment or if the work being done is not in accordance with the Scope of Work or an approved Work Plan.
- D. During the course of implementation of the Consent Decree, the Project Coordinators shall, whenever possible, attempt to resolve any disputes informally through good faith discussion of the issues.

#### X. QUALITY ASSURANCE.

- A. Defendant shall use U.S. EPA-approved quality assurance, quality control, and chain-of-custody procedures in all sample collections and analysis activities. Such procedures shall be detailed in the RFI and CMS Work Plans.
- B. Defendant shall make best efforts to ensure laboratory quality assurance, to include the following measures:

- 1. Defendant shall inform the U.S. EPA Project Coordinator in advance which laboratories will be used by Defendant. Any agreements with such laboratories shall specify that U.S. EPA personnel and U.S. EPA-authorized representatives shall have reasonable access to inspect the laboratories.
- 2. Defendant shall include provisions in all laboratory service contracts that:
  - a. U.S. EPA and U.S. EPA-authorized representatives shall have reasonable access to inspect and audit the laboratories;
  - b. such laboratories shall perform all analyses according to U.S. EPA methods (SW-846) or other methods approved by U.S. EPA. If methods other than U.S. EPA methods are to be used Defendant shall, sixty (60) days prior to the commencement of analyses, submit all protocols to be used for analyses to U.S. EPA for approval;
  - c. such laboratories shall participate in a quality assurance/quality control program equivalent to that which is followed by U.S. EPA:
  - d. a performance audit may be conducted by U.S. EPA on the laboratories selected by the Defendants unless a U.S. EPA contract-lab is selected;
  - e. upon request by U.S. EPA, laboratories shall perform analysis of a reasonable number of known samples provided by U.S. EPA to demonstrate the quality of the analytical data.
- C. Defendant shall use its best efforts to enforce contract provisions with laboratories used pursuant to this Consent Decree.

#### XI. SUBMITTAL OF DOCUMENTS

Documents, including reports, approvals, disapprovals and other correspondence to be submitted to the United States pursuant to this Consent Decree, shall be sent by U.S. certified mail to the following addresses, except as stated herein, and which are subject to change:

A. Three (3) copies of all documents to be submitted to the U.S. EPA should be sent to:

United States Environmental Protection Agency Region V RCRA Enforcement Branch 77 W. Jackson St., HRE-8J Chicago, IL 60604-3590

Attn: Refined Metals Corp. - Project Coordinator

B. One (1) copy [DOES IDEM WANT MORE COPIES?] of all documents to be submitted to IDEM should be sent to:

Thomas Linson, Branch Chief
Office of Solid & Hazardous Waste
 Management Branch
Indiana Department of Environmental
 Management
105 S. Meridian St.
P.O. Box 6015
Indianapolis, Indiana 46206-6015

Attn: Refined Metals Corp.

C. Documents to be submitted to the Department of Justice should be sent to:

United States Department of Justice Environmental Enforcement Section P.O. Box 7611 Ben Franklin Station Washington, D.C. 20044

Re:[DOJ case #90-11-2-469] <u>U.S.</u> <u>v. Refined Metals</u>

D. All plans required by this Consent Decree are enforceable requirements of this Consent Decree.

#### [THE UNITED STATES PROPOSES ADDING THE FOLLOWING SECTION:]

E. Delivery shall be considered complete upon actual delivery or deposit of the document or other required item in the U.S. Mail, certified mail, or with a reputable delivery service.

#### XII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. Defendant shall make available to U.S. EPA the results of all sampling, tests, analyses and/or other data generated by,

or on behalf of the Defendant within fifteen (15) days after receiving the results from the laboratory or in the next report under Section VI.G.1 and/or Section VI.G.2, but in any event no later than thirty (30) days after receiving results from the laboratory.

- B. At the request of the U.S. EPA, the Defendant shall provide split or duplicate samples to U.S. EPA of any samples collected by, or on behalf of, the Defendant. Defendant shall notify U.S. EPA not less than seventy-two (72) hours in advance of any sample collection activity, provided, however, that Defendant shall notify U.S. EPA at least ten (10) days prior to any sampling relating to closure required under this Consent Decree. U.S. EPA shall provide its own sample containers.
- C. Defendant may assert a confidentiality claim pursuant to 40 CFR 2.203(b), if appropriate, covering part or all of the information requested by this Consent Decree. Analytical data shall not be claimed as confidential by the Defendant. Information determined to be confidential by U.S. EPA will be rafforded the protection specified in 40 CFR Part 2, Subpart B. If no such claim accompanies this information when it is submitted to U.S. EPA, it may be made available to the public by U.S. EPA without further notice to the Defendant. If the information is determined not to be confidential in accordance with Federal laws and regulations, the information may be made public by U.S. EPA in accordance with the provisions of 40 CFR Part 2. U.S. EPA shall provide written notice to the Defendant in the event of any such determination.
- D. Defendant agrees that it shall preserve and make available to U.S. EPA for inspection and copying during the pendency of this Consent Decree and for a minimum of six (6) years after its termination, all records and documents in Defendant's possession or in the possession of its divisions, employees, agents or consultants or contractors which relate in any way to this Consent Decree or to hazardous waste management and disposal at the facility. At the conclusion of the six (6) year period, and prior to any alienation of such records, Defendant shall make them available to U.S. EPA for its retention and shall provide copies of any such records to U.S. EPA upon U.S. EPA's request.

#### XIII. CIVIL PENALTY

A. Defendant shall pay a civil penalty of \$118,000 to the United States of America. The payment shall be made in the form of a cashier's or certified check, payable to the "Treasurer of the United States of America" within thirty (30) days of lodging of this Consent Decree, and shall be tendered to the United States Attorney for the Southern District of Indiana, at the following address:

Thomas Kieper
Assistant United States Attorney
Southern District of Indiana
46 East Ohio Street
Indianapolis, IN 46204

At the time of payment, copies of such check shall be sent to U.S. EPA and the Department of Justice to the address specified in Section XI of this Decree.

B. In addition, Defendant shall pay civil penalties of \$500,000 to the United States of America in the following manner: the Defendant shall make three payments of \$166,666.67, each payment to be made in the form of a cashier's or certified check, payable to the "Treasurer of the United States of America." The first payment shall be made within three years of lodging of this Consent Decree, the second payment shall be made within four years of lodging of this Consent Decree, and the third payment shall be made within five years of lodging of this consent decree. Each payment shall be tendered to the United States Attorney for the Southern District of Indiana, at the following address:

Thomas Kieper
Assistant United States Attorney
Southern District of Indiana
46 East Ohio Street
Indianapolis, IN 46204

At the time of payment, copies of such check shall be sent to U.S. EPA and the Department of Justice to the address specified in Section XI of this Decree.

C. [LANGUAGE TO BE PROVIDED BY DOJ REGARDING DEFENDANT'S INSURANCE.]

#### XIV. STIPULATED PENALTIES

A. The Defendant shall pay the following stipulated penalties for each failure to comply with any requirement set forth in this Consent Decree, including any deadline in any plan required to be submitted and implemented pursuant to Section VI of this Consent Decree.

For purposes of this Consent Decree, three tiers of stipulated penalties shall apply:

Tier I noncompliance shall be defined as follows:

 failure to commence or complete on time
 corrective measure(s) work pursuant to Section VI of this Consent Decree;

- b. failure to provide on time the financial assurance required under this Consent Decree. c. failure to provide on time the liability coverage (under 329 IAC 3-22-24(a)) [IDEM: should this be 3.1-14-24, per prior conversation?] required under this Consent Decree; and d. failure to submit on time the RFI Work Plan (including QAPjP), CMS Work Plan, or CMI Program Plan.
- 2. Tier II noncompliance shall be defined as the failure to submit on time each of the following documents:
  - a. any preliminary plans or reports; or
  - any final plans or reports.
- 3. Tier III noncompliance shall be defined as the failure to submit any monthly progress report as required by the terms of this Consent Decree or comply with any requirement of this Consent Decree, not described in Sections XIV.A.1 and XIV.A.2, above.
- 4. Stipulated penalties for the violations described above shall accrue in the following amounts:

Period of Failure to Comply	
Tier I Noncompliance:	<u>Noncompliance</u>
1st through 30th day 31st through 60th day 61st day and beyond	\$ 2,000 4,000 6,000
Tier II Noncompliance:	
1st through 30th day 31st through 60th day 61st day and beyond	\$ 1,000 2,000 3,000
Tier III Noncompliance:	
1st through 30th day 31st through 60th day 61st day and beyond	\$ 500 1,000 1,500

B. If any plan or report required to be submitted to U.S. EPA for approval under Section VI herein is disapproved by U.S. EPA, then the submission shall be deemed inadequate and a violation of this Consent Decree, and shall be subject to stipulated penalties beginning thirty days after Defendant receives notification from U.S. EPA that the plan or report is

disapproved, provided however that if a substitute acceptable to U.S. EPA is submitted within the thirty day period, no stipulated penalties will be assessed.

- C. All penalties begin to accrue on the day that performance is due or a violation occurs, and continue to accrue through the final day of correction of the violation.
- D. Stipulated penalties shall accrue during any dispute resolution proceeding. Defendant shall pay all accrued sums, with interest at the rate set forth at 31 U.S.C. §3717 within thirty (30) days of Defendant's failure to file a petition pursuant to Section XX.C, or within thirty (30) days of the Court's decision.
- E. Stipulated penalties under this Section shall be paid within thirty (30) days of receipt of written notification from U.S. EPA or IDEM, such payment to be made in the manner prescribed in Section XIII above unless Defendant invokes dispute resolution (Section XX). The written notification shall be accompanied by a statement which identifies each instance of noncompliance, the date(s) of noncompliance, and the amount of payment. The payment shall be accompanied by a statement which identifies each instance of noncompliance, the date(s) of noncompliance, and the amount of payment.
- F. Payment of stipulated penalties shall be made in the manner specified in Section XIII. [OMITTED BECAUSE DUPLICATES EXACT LANGUAGE IN PRECEDING PARAGRAPH.]
- F. Fifty percent of stipulated penalties shall be paid to the United States and fifty percent to IDEM for violations of the requirements of Section VI.A-C of this Decree. Payment to the United States shall be in accordance with the requirements of Paragraph E of this Section. Payment to IDEM shall be paid by cashier's or certified check payable to "Environmental Management Special Fund" and shall be tendered to the attention of the Cashier, IDEM, at the address provided in Section XI.B. [IDEM --CORRECT METHOD OF PAYMENT?]

#### XV. ACCESS TO THE FACILITY AND SAMPLES

A. U.S. EPA, IDEM, and their respective employees, contractors, and authorized representatives, upon presentation of proper credentials, are authorized at any reasonable time to enter and freely move about all property at the facility for the purpose of, inter alia: interviewing the Project Coordinator, his designated representative(s) or contractor personnel directly involved in RFI field work at the facility; inspecting records, operating logs, and contracts related to the performance under this Consent Decree; reviewing the progress of the Defendant in

carrying out the terms of this Consent Decree; evaluating the compliance of the Defendant with the provisions of this Consent Decree; conducting such sampling and tests as U.S. EPA or its representative deem necessary for evaluating compliance with this Consent Decree; using a camera, sound recording, or other documentary type equipment for evaluating compliance with this Consent Decree; and verifying the reports and data submitted to U.S. EPA by the Defendant under this Consent Decree. The Defendant shall permit such persons to inspect and copy all records, files, photographs, and other writings, including all sampling and monitoring data that pertains to work undertaken pursuant to this consent decree. In addition, Defendant shall insure that such persons have the authority to inspect at all reasonable times laboratories used by Defendant or its contractors for analyses conducted under this Consent Decree.

- B. To the extent that work required by this Consent Decree must be done on property not owned or controlled by Defendant, Defendant will use its best efforts to obtain site access agreements from the present owner(s) of such property within forty-five (45) days of lodging of this Consent Decree. Such efforts to secure access shall include the transmission by defendants to the property owner of a formal request for access, to be sent by certified letter, return receipt requested, within the forty-five (45) calendar day period. Any such access agreement negotiated with adjacent property owners shall be incorporated by reference into this Consent Decree. Defendant shall report fully on its efforts to secure access in its reports submitted pursuant to Section VI.G herein. In the event U.S. EPA obtains access for Defendant, Defendant shall undertake the necessary activities in accordance with this Consent Decree.
- C. This Section in no way limits any right of entry available to U.S. EPA or IDEM pursuant to applicable Federal or State laws, regulations, or permits, including, but not limited to, Section 3007 of RCRA, 42 U.S.C. §6927.

## XVI. RESERVATION OF RIGHTS AND OBLIGATION TO COMPLY WITH ALL LAWS

A. Plaintiff does not waive any rights or remedies, and this Consent Decree is without prejudice to Plaintiff's rights and remedies, including, but not limited to: (1) the right to impose and/or enforce any permit requirements, including corrective action requirements under Section 3004(u) and (v) of RCRA, 42 U.S.C. § 6924(u) and (v); (2) the right to take any action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act, Pub L. 99-499 (hereinafter "CERCLA"); (3) the right to require corrective action pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h); and (4) the right to pursue remedies available

to the United States for any violation by Defendant of this Consent Decree, or of any Federal or State law, regulation, or permitting condition, not specifically alleged in the Complaint and resolved by this Consent Decree.

#### [RMC HAS OBJECTED TO PART 4; NOT RESOLVED]

- B. The execution or performance of this Consent Decree by Defendant shall not constitute an admission of any fact or legal issue, or of any liability or wrongdoing relating to the Refined Metals facility. Defendant expressly reserves the right to raise all legal and equitable rights, claims and defenses which it may have under RCRA, CAA or any other legal authority in any proceeding initiated by Plaintiff, other than one to enforce the requirements of this Consent Decree, and except to the extent inconsistent with the terms of this Consent Decree.
- C. This Consent Decree in no way relieves Defendant of its responsibility to comply with all applicable Federal, State and local laws, regulations, and permit conditions. This Consent Decree is neither a permit nor a modification to a permit.

#### []. COVENANT NOT TO SUE

Except as otherwise provided herein, the United States covenants not to sue Defendant for relief pursuant to Sections 3008(a),(g) and (h) of RCRA, 42 U.S.C. §§§ 6928(a),(g), and (h), and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), for the violations alleged in the Complaint.

[RMC IS GOING TO GET BACK TO US ON ITS CONCERNS WITH THE COVENANT NOT TO SUE, WHICH CONCERNS MAY RELATE TO SECTION XVI.A.4 AS WELL]

## XVII. <u>PRECLUSION OF CLAIMS AGAINST THE</u> HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

Defendant agrees not to make any claims pursuant to Sections 106(b), 111 or 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611 or 9612, or any other provision of law, directly or indirectly against the Hazardous Substance Response Trust Fund established by CERCLA for costs incurred in complying with this Consent Decree. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a CERCLA claim within the meaning of 40 CFR § 300.25(d).

#### XVIII. COSTS

Each party to this action shall bear its own costs and attorney's fees.

#### XIX. MODIFICATIONS

No requirement or provision of this Consent Decree shall be modified except upon written agreement by the parties and further order of this Court, or upon order by this Court under Section XX herein (Dispute Resolution).

#### XX. DISPUTE RESOLUTION

- A. In the event that the parties cannot resolve a dispute with respect to this Consent Decree, then the interpretation advanced by the United States shall be considered binding unless Defendant invokes the dispute resolution provisions of this Section.
- B. If in the opinion of either party there is a dispute with respect to any obligation imposed by this Consent Decree or any plan incorporated therein, that party shall send a written notice to the other party which outlines the nature of the dispute and suggests a means for its resolution. Any such request shall be followed by a period of informal negotiations which shall not extend beyond thirty (30) days from the date when the notice was sent unless the parties agree otherwise.
- C. If the informal negotiations are unsuccessful, Plaintiff's position shall control unless Defendant files with the court a petition which shall describe the nature of the dispute and include a proposal for its resolution. Defendant's petition must be filed no more than twenty (20) days after mailing by overnight delivery of Plaintiff's written notice of termination of informal negotiations. Plaintiff shall then have twenty (20) days to respond to the petition. In any such dispute, Defendant shall have the burden of proving that Plaintiff's position is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law. If Defendant does not sustain that burden, the United States shall prevail. In any instance in which the United States has compiled a record documenting a final agency decision, as contemplated in Section VI.E of the Consent Decree, any judicial review of the agency action shall be on the Administrative Record.
- D. Invocation of the dispute resolution provisions of this Section shall not extend or postpone any obligations not directly in dispute imposed by this Decree, unless U.S. EPA agrees otherwise. Stipulated penalties with respect to a disputed matter, if any, shall continue to accrue but payment shall be stayed pending resolution of the dispute and payable upon any decision adverse to Defendant, in accordance with Section XIV (Stipulated Penalties).

#### XXI. FORCE MAJEURE

- A. A "Force Majeure" event for purposes of this Decree is defined as any event that is caused by circumstances entirely beyond the control of Defendant or any entity controlled by or under the common control of Defendant including the Defendant's consultants and contractors, and that Defendant could not have foreseen and prevented, that delays or prevents the performance of any obligation under this Consent Decree. Failure to obtain a permit is not a force majeure event. [RMC CONCERN OVER STATE PERMITS]
- When circumstances are occurring or have occurred В. that can reasonably be anticipated to cause a delay in achieving compliance with any requirement set forth in this Consent Decree, or in any plan developed hereunder within the time allowed under the Decree, whether or not due to a "Force Majeure" event, Defendant shall promptly notify U.S. EPA -- in no event later than five business days (for verbal notification) and ten business days (for written notification) after Defendant obtains or should have obtained information indicating that a delay reasonably can be anticipated to be encountered. The required written notice shall include a detailed explanation of the precise cause(s) for and anticipated duration of any such delay; the measures taken and to be taken by Defendant to prevent or minimize the delay; the timetable for implementation of such measures; the anticipated date such requirement will be achieved; a statement as to whether Defendant is claiming a "Force Majeure"; and the bases for Defendant's claim of "Force Majeure". The Defendant shall adopt all reasonable measures to avoid or minimize any such delay. Failure to notify within the time period specified above shall constitute a waiver of any claim of "Force Majeure" with respect to the particular event involved. Notification of any delay, in and of itself, shall not extend the time allowed for meeting any requirement or excuse the delay or payment of stipulated penalties. U.S. EPA shall notify Defendant in writing of its agreement or disagreement after receipt of Defendant's written notification.
- C. If the United States agrees that a delay is or was attributable to a "Force Majeure" event, the parties shall, by written agreement, modify the compliance schedule to provide such additional time as may be necessary to allow the completion of the specific phase of the required activity and/or any succeeding phase of the activity affected by such delay, not to exceed the actual duration of the delay.
- D. If the United States and Defendant are unable to agree as to whether the reason for the delay was a "Force Majeure" event, or on a stipulated extension of time, then the Dispute Resolution provisions of Section XX shall apply. Defendant shall have the burden of demonstrating that the event

was a "Force Majeure" event, that the duration of the delay caused by such event is or was warranted under the circumstances, and that, as a result of the delay, a particular extension period is appropriate.

E. Increased costs of complying with this Consent Decree, or Defendant's financial inability to carry out the provisions of this Consent Decree, shall not be considered a "Force Majeure" event.

#### XXII. SEVERABILITY

The provisions of this Consent Decree shall be severable, and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force and effect.

#### XXIII. EFFECTS OF CHANGES IN STATE AUTHORIZATION

If prior to the termination of this Consent Decree, the State of Indiana pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), promulgates and adopts corrective action regulations which are approved by the federal government, then the federally-approved state regulations rather than the federal standards shall apply to and be enforceable under this Consent Decree unless such standards would require the revision of a Plan previously submitted and approved pursuant to Section VI of this Consent Decree.

#### XXIV. CONTINUING JURISDICTION OF THE COURT

The Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

#### XXV. TERMINATION

Once, Defendant judges it has fully complied with all of the requirements of this Consent Decree, and is continuing to comply with the reporting requirements, if any, of this Consent Decree, it shall submit to U.S. EPA a certification of compliance. If U.S. EPA concurs that Defendant has fully satisfied the requirements of this Consent Decree, the parties shall file a joint motion with the Court to terminate this Consent Decree. After passage of 120 days from Defendant's submission to U.S. EPA of a certification of compliance, Defendant may file a motion with the Court to terminate this Consent Decree. U.S. EPA reserves its right to oppose or support Defendant's motion.

#### XXVI. NOTICE REQUIREMENTS

The parties acknowledge of United States and the entry of this the Public Notice and Comment requirements	that final approval by the s Consent Decree are subject to irements of 28 CFR § 50.7.
Date and entered this	_day of, 1993.
	Judge UNITED STATES DISTRICT COURT
FOR THE PLAINTIFF UNITED STATES OF	AMERICA:
	••
[NAME] Acting Assistant Attorney General Environment and Natural Resources I U.S. Department of Justice	Dated
DEBORAH J. DANIELS United States Attorney for the Southern District of Indiana 46 East Ohio Street Indianapolis, Indiana 46204	Dated
[NAME] Assistant Administrator for Enforcement United States Environmental Protect Agency	Dated tion
VALDAS V. ADAMKUS Regional Administrator U.S. Environmental Protection Agend Region V 77 West Jackson Blvd. Chicago, Illinois 60604	Dated

LEE GELMAN
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

Dated

THOMAS C. JACOBS
Assistant Regional Counsel
U.S. Environmental Protection
Agency, Region V
77 West Jackson Blvd.
Chicago, Illinois 60604

Dated

BRIAN BARWICK
Assistant Regional Counsel
U.S. Environmental Protection
Agency, Region V
77 West Jackson Blvd.
Chicago, Illinois 60604

Dated

#### **EXHIBITS**

- A. Scope of Work for a RCRA Facility Investigation
  - Appendix A. Interim Measures Workplan
  - Appendix B. Interim Measures Investigation Program
  - Appendix C. Interim Measures Design Program
  - Appendix D. Interim Measures Construction Quality

Assurance Plan

Appendix E. Reports

- B. Scope of Work for a Corrective Measures Study
- C. Scope of Work for the Corrective Measure Implementation
- D. Region V Model RCRA Quality Assurance Project Plan (QAPjP)
- E. LSA Document #90-171(F): Revision of 326 IAC 15-1-2
- F. Refined Metals Corporation: Part A Application

From: JACOBS, THOMAS

(TJACOBS)

To:

BBARWICK

Date:

Thursday, May 20, 1993 1:35 pm

Subject:

refined metals

Brian: Spoke with Joanne Callahan (OE-RCRA) yesterday, Lattimer/Gelman/Adenuga this AM, and Joanne again today. DOJ is concerned that we have committed to telling the court soon whtehr it can expect settlement or should set a trial date. Joanne wants to be absolutely sure that Refined has no possible insurance recovery; DOJ stated that we can put language in the decree to the effect that we get all or a part of any relevant insurance. Also, apparently OE is concerned about the penalty structure, because there is draft guidance to the effect that no payment plan can exceed three years. DOJ, Jon and I agree that this is a different situation and that the balloon is necessary to protect against a windfall. I told Joanne today of our need for HQ action on the penalty (so we can find out from Refined if we have a deal, and then go to the court), and that she should contact you (and you could get any RCRA info from Jon, if necessary?) in my absence. Conf. call with OE-RCRA, me, DOJ, and you (and Jon and Brent if interested), tentatively, June 2, 9:30 our time: can you make it? We can easily reschedule if you cannot. See you June 1. Thanks, Tom

CC:

R5RCRA: JADENUGA

Exemption 5 Attorney work Pal

Adenuga HRE-87



#### **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

#### **REGION 5**

77 WEST JACKSON BOULEVARD CHICAGO, IL 60604-3590

MAY 12 1993

Kathryn A. Watson, Director
Office of Enforcement
Indiana Department of Environmental Management'
105 South Meridien Street
P.O. Box 6015
Indianapolis, IN 46206-6015

REPLY TO TH

Ex. S Deliberation Press

Re: U.S. v. Refined Metals

Dear Ms. Watson:

My staff advises me that the Indiana Department of Environmental Management and Indiana Attorney General's Office (collectively referred to hereafter as "the State") have agreed under certain circumstances to forgo a civil penalty in the settlement of Federal and State claims against Refined Metals Corporation ("RMC"). Those conditions, set forth below, are acceptable to the United States Environmental Protection Agency.

The State, the United States, and RMC will enter into a three-party Federal Consent Decree which will include closure and corrective action requirements and require the payment of a civil penalty solely to the United States. The settlement will be structured in a manner designed to ensure that RMC has the financial resources to implement closure and corrective action and pay a significant civil penalty. In addition, any stipulated penalties collected which are attributable to violations of requirements for which the State is authorized will be split evenly between the United States and the State.

With this letter, U.S. EPA considers all of the issues raised in earlier correspondence regarding coordination of State and Federal enforcement efforts in this matter resolved. This correspondence includes letters dated November 10, 1992 (Kathryn A. Watson to Tom Jacobs); November 20, 1992 (Gail C. Ginsberg to Kathryn A. Watson); December 23, 1992 (Kathryn A. Watson to Gail C. Ginsberg); February 3, 1993 (Gail C. Ginsberg to Kathryn A. Watson); and February 12, 1993 (Tom Jacobs to Kathryn A. Watson). U.S. EPA looks forward to continued cooperation with the State in this and other matters. If you have any questions, please contact Tom Jacobs of my staff at (312) 353-7448.

whan Cities

Sincerely yours,

Gail C. Ginsberg
Regional Counsel

cc: Rosemary Cantwell
Leslie Williams
Ruth Ireland
Joseph Boyle
Susan Sylvester
Jon Adenuga
Greg Lattimer
Rett Nelson



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 5

77 WEST JACKSON BOULEVARD CHICAGO, IL 60604-3590

non-responsive

REPLY TO THE /

CONFIDENTIAL -- ATTORNEY WORK PRODUCT -- FOIA EXEMPT



P.02

x.5-Jelibea

TO

DRAFT 4 May 93

Mr. Jeffery S. Hannapel Counsel for Refined Metals Corporation Andrews and Kurth 1701 Pennsylvania Avenue, NW Suite 200 Washington, D.C. 20006

Dear Mr. Hannapel:

The Environmental Protection Agency (EPA) has reviewed the information submitted by Refined Metals Corporation (Refined Metals) on November 9, 1992, February 10, and April 6, 1993, in support of its request for a one-year renewal of the case-by-case extension of the land disposal restrictions (LDR) effective date applicable to the storage of lead-bearing materials prior to smelting at the Refined Metals facility in Beech Grove, Indiana. The Agency granted a generic extension of the effective date applicable to these materials on June 26, 1992 (57 FR 28628). The current extension, which expires on May 8, 1993, was granted to allow owners and operators time to retrofit existing storage units to comply with the containment building standards in 40 CFR Part 264, Subpart DD. As provided in 40 CFR 268.5(e), EPA may renew the original extension for up to one additional year if each of the seven demonstrations required under § 268.5(a) still can be made by the applicant.

As part of its evaluation of Refined Metals request for a renewal of the current extension, EPA also consulted with staff in Region 5 and the Indiana Dopartment of Environmental Management (IDEM). It has been brought to our attention that a complaint was filed by EPA, on November 21, 1990, alleging that the Refined Metals Beech Grove facility lost its interim status on November 9, 1985, due to its failure to provide adequate financial assurance per the requirements of Section 3005(e)(2) of RCRA, 42 U.S.C. § 6925 (e)(2).

An memorandum stating the basis for the Complaint has been provided by Mr. Jonathan Adenuga of EPA Region 5. One of the conditions for granting an extension under 40 CFR 268.5 is that the applicant must have arranged for adequate capacity to manage the waste during the extension. Management that does not comply with RCRA requirements does not meet this condition. Here, the facility in which the waste would be managed is not permitted and does not have interim status, so that the management would violate RCRA. For that reason, EPA is proposing to deny the application submitted by Refined Metals for a renewal of the current generic extension.

It is our understanding that EPA Region 5 and IDEM have discussed with Refined Metals the possibility of entering into a consent decree in which continued use of the existing structure would be allowed, for at least some wastes, for a period of time to conduct the phased closure of waste piles within the structure. If such a consent decree is entered, any waste management allowed by the consent decree could be relied upon to help make the demonstration of "adequate capacity to manage the waste", and in those circumstances it may be possible to grant the extension at least in part as all other required demonstrations have been made by Refined Metals. However, EPA requests that Refined Metals provide its plans for the near and long-term role of this existing structure or other planned structure in managing the lead-bearing materials for which an extension renewal is being requested. EPA's review and analysis of the demonstrations provided by Refined Metals in support of

the case-by-case extension renewal is enclosed. (See Enclosure 1). The proposed denial would not preclude renewing the application in that case.

Before making a final determination, EPA is providing Refined Metals with an opportunity to comment on the proposed action. In order for EPA to complete our evaluation of the Refined Metals application in a timely manner, any comments should be sent within 7 days of the receipt of today's correspondence. (See Enclosure 2). If you do not believe that a full response can be made within 7 days, Refined Metals may wish to withdraw its petition now and submit a complete new petition later at its convenience or request additional time.

Please contact Mr. Les Otte or Mr. William Kline, of my staff at (703) 308-8480 and (703) 341-3631, respectively, if you have any questions on this matter.

Sincerely,

Richard J. Guimond Assistant Surgeon General, USPHS Acting Assistant Administrator

#### **Enclosures**

cc: George Wyeth, OGC
Les Otte, WMD
William J. Kline, WMD
Jim Michael, PSPD
Ken Gigliello, OWPE
Region 5 RCRA Division Director
Jonathan Adenuga, Region 5
Rob Hoelscher, Region 5
Tom Jacobs, Region 5
Paula Bansch, IDEM
Jim Gross, IDEM
Mr. T.W. Freudiger, Refined Metals Corporation

TO

Refined Metals' response should be sent to one of the following addresses:

By regular mail:

Mr. William J. Kline U.S. Environmental Protection Agency Office of Solid Waste (OS-321-W) 401 M Street, SW Washington, DC 20460

By over-night delivery, etc.:

Mr. William J. Kline
U.S. Environmental Protection Agency
Office of Solid Waste (OS-321W)
Capacity Programs Branch
2800 Crystal Drive, 7th Floor
Arlington, VA 22202
(703) 308-8440

BILL DOYA the should be fored to:

1) GEORGE NTETH, OGC, 260-0584

2) TOM JACOBS REGION 5

2) TOM JACOBS REGION 5

FAX# 312-886-7160

FAX# 312-886-7160

FAX# 312-753-4788

FAX # 312-753-4788

## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION V

Garl E. Brimer

DATE: APR 2 1993

SUBJECT: Refined Metals Corporation IND 000 718 130

RCRA Containment Building Compliance

FROM: Karl E. Bremer, Chief

RCRA Permitting Branch

TO: Joe Boyle. Chief

RCRA Enforcement Branch

This memo transmits RPB's deferral to REB of compliance issues related to the newly effective containment building standards for the Refined Metals facility in Beech Grove, Indiana. Codified at Subpart DD of 40 CFR 264 and 265, the standards for this new RCRA unit became effective on February 18, 1993, but due to a national capacity variance for secondary lead smelters, the effective date for these facilities with containment buildings is delayed until May 8, 1993. Pursuant to the new rule, a facility that plans to manage hazardous waste in a RCRA containment building must receive a temporary authorization from U.S. EPA, and if requested, secure a variance from the secondary containment requirement by the May 8, 1993, deadline. Headquarters has given secondary lead smelters the option of extending the current national capacity variance for up to one year on a case-by-case basis. If granted, a facility must comply with the new standards by May 8, 1994.

Because of the ongoing enforcement proceedings between REB and Refined Metals, RPB has determined that the LOIS issues and the closure requirements in the Order must be resolved before RPB can address any permit issues for the facility's containment building. We believe that it is not appropriate for RPB to proceed with permitting for this unit at this time, and therefore recommend that REB assume responsibility for compliance with the new rule.

Attached to this memo is Refined Metals' application for a variance from the secondary containment requirements under the Subpart DD standards. RPB has elected not to respond to this request, and believes that it is more appropriately addressed by REB. In addition, Refined Metals has requested from Headquarters a one-year, case-by-case extension to the national capacity variance for secondary lead smelters. RPB staff are arranging a conference call with Jonathon Adenuga of REB and Headquarters to determine whether Refined Metals is eligible for such a variance, and if so, the potential impact of the variance on the facility's compliance status.

Questions or clarifications about this matter may be directed to Hak Cho or Rob Hoelscher of my staff.

#### Attachments

cc: N. Niedergang (w/o attachments)

H. Cho (w/o attachments)

- R. Hoelscher (w/o attachments)
- S. Sylvester
- P. Bansch, IDEM
- T. Linson. IDEM

Ex.5-Delibration

PROTECT 『ANDREWS & KURTH

ATTORNEYS

1701 PENNSYLVANIA AVENUE, N. W.

FEB 23 P2:59

SUITE 200

WASHINGTON, D.C. 20006

TELEPHONE: (202) 662-2700 TELECOPIER: (202) 662-2739 TELEX: 79-1208

OFFICE THE REGIONAL FOR HISTOR

FEB 2 4 1993

OFFICE OF RCRA

Waste Management Division U.S. EPA, REGION V

February 17, 1993

#### Via Certified Mail

OTHER OFFICES:

HOUSTON

DALLAS

LOS ANGELES

NEW YORK

Mr. Valdas V. Adamkus Regional Administrator U.S. Environmental Protection Agency 77 West Jackson Boulevard Chicago, Illinois 60604

> Re: Application for Variance from Secondary Containment Requirements for Containment Building Units

Refined Metals Corporation - Beech Grove, Indiana

Dear Mr. Adamkus:

On August 18, 1992, EPA promulgated final regulations for containment building units under the Resource Conservation and Recovery Act ("RCRA"). 57 Fed. Reg. 37194 (1992). These regulations created a new waste management unit whereby hazardous waste could be treated or stored without being considered land disposal. Refined Metals Corporation ("Refined Metals" or "the Company") hereby submits this application for a two-year variance from the secondary containment requirements of the containment building regulations for the raw materials storage units at its lead recycling facility in Beech Grove, Indiana.

The final regulations for containment buildings provide that EPA may delay the secondary containment requirements for existing units being converted into containment building units, provided that the owner or operator of the facility demonstrates that the units substantially comply with the applicable containment building requirements. Accordingly, facilities with existing hazardous waste units Regional Administrator by February 18, 1993 for a two-year variance from the secondary containment requirements for containment secondary containment requirements for containment building units. 40 C.F.R. on §264.1101(b)(4) (as promulgated at 57 Fed. Reg. 37966). have a liquid collection system; 4) have a secondary containment system; and 5) meet the "no visible fugitive emissions" standard. By this application, Refined Metals requests that it be granted a two-year variance for its raw materials storage units. As part of a submission to EDA.

As part of a submission to EDA.

As part of a submission to EPA officials in Washington, D.C. regarding a case-by-case capacity extension of the effective date of the land disposal restrictions applicable to the storage of lead-bearing raw materials prior to recycling, Refined Metals indicated that the existing raw materials storage units were in compliance

Mr. Valdas V. Adamkus February 17, 1993 Page 2

Andrews & Kurth

L.L.P.

with the applicable containment building requirements, with the exception of the secondary containment requirements. These units are three-walled bins inside an enclosed, self-supporting building. The building has reinforced concrete floors with a protective covering as a primary barrier. Furthermore, the floors are constructed to drain any liquids to a sump for collection and then treatment in the wastewater treatment system. The materials stored in these units are handled in a manner to minimize fugitive emissions within the building. Accordingly, the containment building meets the "no visible fugitive emissions" standard. In addition, the Company also prepared a schedule for the proposed retrofitting of the units with secondary containment. The schedule is enclosed for your convenience and is hereby incorporated in support of this variance request. Accordingly, Refined Metals has demonstrated that its storage units substantially comply with the applicable containment building regulations, and the facility should be granted a two-year variance from the secondary containment requirements for these units.

On behalf of Refined Metals Corporation, thank you for your time and attention regarding this matter. If you have any questions or would like additional information, please contact me.

Sincerely.

Jeffery S. Hannapel

Counsel for Refined Metals Corporation

JSH/rah Enclosures

cc: Mr. T. W. Freudiger

### **Refined Metals Corporation**

### Schedule for Containment Building Units

November 1992	Submit case-by-case capacity extension application
February 10, 1993	Submit supplemental information for case-by-case application.
February 18, 1993	Submit application for two-year variance from secondary containment requirements for containment building units.
June 1993	Prepare engineering report on design for proposed modification to retrofit existing storage units to containment building (i.e., secondary containment system)
August 1993	Submit permit modification for containment building units to state agency.
July 1994	Approval from state on permit modification.
December 1994	Complete installation of proposed modifications.
February 18, 1995	Compliance with all applicable containment building requirements.

-> S. Sylvoster



#### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

#### **REGION 5**

#### 77 WEST JACKSON BOULEVARD CHICAGO, IL 60604-3590

FEB 0 3 1993

REPLY TO THE ATTENTION OF:

C-3T

Kathryn A. Watson Director Office of Enforcement Indiana Department of Environmental Management 105 South Meridian Street P.O. Box 6015 Indianapolis, Indiana 46206-6015

Re: United States v. Refined Metals Corporation,

Docket No. IP 902077

Dear Ms. Watson:

Thank you for your December 23, 1992, letter wherein the Indiana Department of Environmental Management ("IDEM") agreed to coordinate resolution of its administrative action against Refined Metals Corporation ("RMC") with our efforts to resolve the above-referenced action.

Your letter is substantively consistent with our understanding of the agreement but there are a couple of points which need clarification. Therefore, I have instructed Tom Jacobs and Brian Barwick of my staff to prepare, and to submit to IDEM for review and comment, a draft document which will set forth the terms of the agreement. Once IDEM and Region 5 are both satisfied that the document reflects the terms of the agreement, our respective agencies may concur by signing the document.

Our intent is not to renegotiate the agreement but rather to reduce it to writing in one document. As things stand now, in order to understand the agreement, Region 5 and IDEM would have to look to be Region's November 20, 1992, letter, inter-agency discussion. November 23, 1992, and your December 23, 1992, letter. The potential for future misunderstanding will be greatly reduced by inter-agency cooperation now in creating a single document setting forth the agreement.

DEDETVEN FEB U 8 1993

U.S. EPA, REGION V DIVISION WASTE MANAGEMENT DIVISION WASTE OF THE DIRECTOR OFFICE OF THE DIRECTOR Messrs. Jacobs and Barwick will forward the draft document to you as soon as possible but by no later than February 12, 1993. Please contact Mr. Jacobs (312-353-7448) or Mr. Barwick (312-886-6620) with any questions concerning this matter.

Sincerely yours,

Gall C. Gensberg Regional Counsel

cc: William E. Muno, Acting Director

Waste Management Division

David Kee, Director

Air and Radiation Division

Kathy Prosser, Director

Indiana Department of Environmental Management

Rosemary Spaulding, Deputy Commissioner and General Counsel, Indiana Department of Environmental Management

## OF A SENTAL PROTECTION

#### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5 77 WEST JACKSON BOULEVARD CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

NOV # 0 1982

FOIA EXEMPT -- INTERAGENCY COMMUNICATION

Kathryn A. Watson
Director
Office of Enforcement
Indiana Department of Environmental Management
105 South Meridian Street
P.O. Box 6015
Indianapolis, Indiana 46206-6015

Re: U.S. v. Refined Metals

Dear Ms. Watson:

We have carefully considered your November 10, 1992, letter which sets forth IDEM's request to intervene and share in any assessed penalty in <u>U.S. v. Refined Metals</u>. We believe, for the reasons discussed below, that intervention and penalty splitting are not appropriate in <u>Refined Metals</u>. However, Region 5 is committed to working together with IDEM to satisfy your concerns. Specifically, we suggest that the Region and IDEM identify and discuss other cases currently under development that may be appropriate for penalty splitting under Region 5 policy.

Region 5 prefers that the IDEM administrative action be settled with a State administrative consent order and that compliance with that order be a requirement in the Federal consent decree. A State consent order coordinated with a Federal consent decree would afford Refined Metals the comprehensive settlement it desires, allow IDEM to specify its own requirements, and improve efficiency by avoiding the administrative burdens for all parties associated with filing for intervention. In addition, while we believe that prospects for settlement are good, full litigation of this matter is still a distinct possibility and, therefore, if IDEM intervenes, it and the Indiana Attorney General must be prepared to expend the resources necessary to conduct such litigation. By agreeing to the settlement structure we have proposed, IDEM can participate in the settlement of this matter, receive a significant penalty from Refined Metals, and avoid being inadvertently drawn into litigation of this case. In addition, we are willing to discuss

language in the Federal consent decree splitting any stipulated penalties with the State that may arise under the decree due to Refined Metal's failure to comply with the State order.

In your letter, you requested that the State receive an equitable share of any civil penalty assessed against Refined Metals and estimated that share to be forty (40) percent based upon the amount of work the State has invested in this case. While Region 5 recognizes and very much appreciates that IDEM has expended resources on this matter, IDEM's activities described in your letter are similar to those invested by a State in cases it refers to the Region for enforcement. For example, a State typically provides evidence to the Region to support the violations in a referral. Also, a State has obligations regarding closure and permitting, pursuant to its status as a RCRA authorized State, that are independent of any requirement of the draft Federal consent decree. In that sense, the Federal consent decree recognizes the division of RCRA regulatory authority with the State and does not impose upon the State any additional burden. This is not meant in any way to minimize the work the State has done in Refined Metals or any other RCRA case, but only to restate the roles our respective Agencies perform.

Region 5 has previously considered the issue of penalty splitting in light of the essential cooperative relationship between U.S. EPA and the states pursuant to state authorization. The Regional Administrator issued guidance on the subject in November 1988, a copy of which is attached. In it, the Regional Administrator outlined the criteria for penalty splitting and repeatedly identified the posture of appropriate cases. The guidance recognized that agreements must be reached early in case development -- within 60 days of filing of the complaint -- so that the parties can define their roles and divide the labor required by litigation. Unfortunately, that time has passed in this case; at this stage in Refined Metals, the roles of our respective Agencies have already been determined and litigation responsibilities defined through the course of discovery.

Because the Region does recognize the State's legitimate efforts and needs as a cooperative partner in enforcement, the Region is committed to working with IDEM in accordance with Region 5 policy to strengthen cooperation and split penalties appropriately. It has come to our attention, and IDEM is undoubtedly aware, that there are cases currently under development that are likely to be appropriate for penalty splitting understandings between the State and the Region. Both Eric Cohen, Chief, Air, Water, Toxics and General Law Branch, and Michael G. Smith, Chief, Multi-Media Branch, Office of Regional Counsel, are committed to working with the State to determine which of these cases are appropriate for penalty splitting agreements and to reach understandings up-front on the division of labor in those cases.

While we regret that <u>U.S. v. Refined Metals</u> is not an appropriate case for penalty splitting, we are committed to continuing a cooperative partnership with IDEM in this case that recognizes IDEM's referral of the case to the Region for enforcement, the State's role pursuant to state authorization, and the resources of both parties. In addition, it is important to note that settlement of this case is not a foregone conclusion, and considerable uncertainty lies ahead. Therefore, we hope that the State will continue to participate in our negotiations with Refined Metals, coordinate settlement of its administrative action with settlement of the Federal action (which would include payment to the State of a civil penalty of not greater than \$100,000), and work with Region 5 to identify and discuss other cases currently under development that may be appropriate for penalty splitting under Region 5 policy.

We appreciate your cooperation in this matter. Please contact Tom Jacobs (312-353-7448) or Brian Barwick (312-886-6620) regarding any of these issues.

Sincerely yours,

Gail C. Ginsberg Regional Counsel

cc: Valdas V. Adamkus

Regional Administrator

David A. Ullrich

Acting Deputy Regional Administrator

William E. Muno, Acting Director

Waste Management Division

David Kee, Director

Air and Radiation Division

Kathy Prosser, Director

Indiana Department of Environmental Management

Rosemary Spaulding, Deputy Commissioner and

General Counsel, Indiana Department of Environmental Management

## ANDREWS & KURTH

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WASHINGTON, D. C. 20006

OTHER OFFICES: HOUSTON DALLAS LIJS ANGELES

TELEPHONE.(202) 962-2700 TELECOPIER(202) 962-2739 TELEX: 79-206

July 3, 1991

FOR SETTLEMENT PURPOSES

Via Telecopy and First-Class Mail

Daniel S. Jacobs, Esquire Trial Attorney Environmental Enforcement Section U.S. Department of Justice Washington, D.C. 20530

> Re: United States v. Refined Metals Corporation, Civil Action No. IP902077C

Dear Dan:

As per our discussions and in response to your letter dated June 25, 1991, please find enclosed a detailed overview of the proposed closure tasks and schedule with respect to those areas where lead bearing materials and waste by-products have been stored at the Refined Metals Corporation ("Refined Metals") site.

In light of the limited time and the need for an exchange of technical information between the parties, we are submitting only an overview of the closure tasks and schedule at this time. We are prepared to submit a formal revised closure plan provided the parties are able to reach a conceptual settlement of the above-captioned proceeding. As you know, the revised closure plan would be submitted to IDEM; thus, assuming settlement proceeds, we must involve IDEM in this process.

We are also enclosing the second set of groundwater analyses which confirm that the groundwater has not been impacted adversely by operations. The data is important, particularly in light of the Company's desire to resume operations.

In anticipation of our meeting, now scheduled for 10:00 a.m. (CST), July 10, 1991, we have identified the following issues for discussion:

- 1. Closure Plan Overview
  - a. Tasks.
  - b. Proposed Schedule.
  - c. Financial assurance requirements and the Company's request for a waiver. As an alternative, Refined Metals may be willing to satisfy the financial assurance requirements provided it can withdraw

Daniel S. Jacobs, Esquire July 3, 1991 Page 2

funds as it completes each closure task. This alternative assumes that the closure activities contained in the outline are acceptable to the regulatory agencies.

- 2. Part B Permit/Variance
  - a. Schedule.
  - b. Position of EPA.
- 3. Corrective Action
  - a. Facilitywide.
  - b. Waiver from financial assurance requirements.
- 4. Interim Protective Measures for Raw Materials Storage Building.
  - a. To be proposed by EPA and discussed by the parties.
  - b. Timetable.
- 5. Regulatory Status of Drosses, Sludges and Scrap Metal.
  - a. Confirm that materials are not a solid waste if not mixed with hazardous waste.
- 6. Groundwater Monitoring Network.
  - a. Adequacy of number and location of wells.
- 7. Penalty.
  - a. Government's response to Refined Metals' offer conveyed by letter dated April 24?
  - b. Under separate cover and subject to protective order, submission of financial information with respect to the "ability to pay" issue.
  - c. Factual disputes as to allegations contained in the Complaint.
- 8. Resume Operations.

## ANDREWS & KURTH

Daniel S. Jacobs, Esquire July 3, 1991 Page 3

On behalf of Refined Metals Corporation, we trust that this letter addresses the outstanding issues and will result in a productive meeting on July 10.

Sincerely,

Robert N. Steinwurtzel

Counsel to Refined Metals Corporation

RNS/bao

Enclosure

cc:

Thomas Jacobs, Esquire Mr. T.W. Freudiger Thomas R. Lotterman, Esquire Mr. Jack Waggener

## REFINED METALS CORPORATION BEECH GROVE, IN

## DRAFT CLOSURE OVERVIEW MATERIAL STORAGE AREAS

Closure of the storage areas at Refined Metals Corporation's Beech Grove Facility will be taking place while the remainder of the facility is operating. Therefore, steps required to close the storage areas will be complicated by ongoing smelting operations, which will be occurring in close proximity to the closure areas.

Lead bearing materials and waste byproducts were stored in areas shown on the attached map. They encompass an outside area, surrounding the material storage building to the northeast and west. Inside storage is provided by the Material Storage Building.

Refined Metals proposes to close storage areas in a stepwise manner. In First, a portion, a quarter or third, of the Material Storage Building will be cleared of all process materials, while the remainder of the building will continue to be used to store materials. Next, the existing concrete floor and any bin dividers will be decontaminated by triple rinsing with a high pressure washer, high efficient vacuums, and/or other means. Any associated wastewater created by this process will be routed to the existing wastewater treatment plant. Any final rinse will be sampled and analyzed for lead, cadmium, and arsenic. Should this rinse sample indicate concentrations above levels agreed to by the parties, a fourth rinse will be performed and second sample taken. Any defects in the floor which may cause damage to the synthetic liner will then be repaired. A three-inch layer of sand will then be placed on top of the existing floor. An impervious synthetic liner will be laid directly on top of the existing floor. Over the liner will be installed a minimum of a six-inch sand layer containing a leachate collection system. In the event that any leachate is collected by this system, it will be routed to a sump and then treated onsite. The final floor layer will be a six (6) inch reinforced concrete slab. When one section is complete and ready to be placed back in service, another section of the building will be modified. This process will continue until the entire building floor has been modified. The end result will be a tank which meets RCRA requirements; Refined Metals may also pursue a Part B permit for the building.

Once the regulatory approval for this closure has been granted, the process of modifying the Material Storage Building Floor should take eighteen (18) months.

After the modifications to the Material Storage Building are completed, work will proceed with the outside storage area located to the northeast and west of the building. Again, using a sequential approach, a portion of the storage area will be triple-rinsed with a high pressure washer. The final rinse will be analyzed for lead, cadmium, and arsenic. Should this rinse sample indicate concentrations above levels agreed to by the parties, a fourth rinse will be performed and second sample taken. The associated wastewater created by this process will be routed to the existing wastewater treatment plant.

Upon completion of the Material Storage Building modifications, the triple-rinsing of the outside area should take six (6) months.

Costs to perform these closure activities are estimated at \$250,000.

## REFINED METALS BEECH GROVE, IN

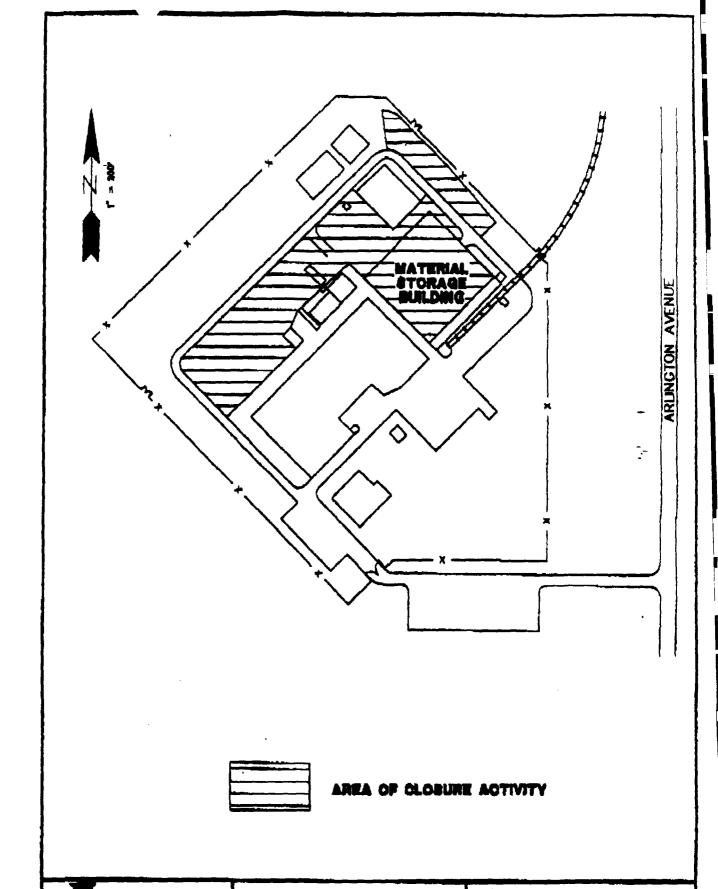
## QUARTERLY GROUND WATER MONITORING SECOND QUARTER 1991 Sampled June 12, 1991

			Upgrad	dient		Downgradie	ent.	
			Well 1	Well 2	Well 3	Well 4	Well 5	Well 5 Duplicat
Lead	Total		0.014	0.021	0.008	0.014	0.005 <	0.001
	Dissolved	<	0.001	0.001	0.002	0.002	0.001	0.001
Arsenic	Total		0.008	0.003	0.012 <	0.002 <	0.002 <	0.002
	Dissolved		0.003	0.003 <	0.002 <	0.002 <	0.002	0.003
Cadmium	Total	<	0.0002	0.0002	0.0002 <	0.0002 <	0.0002 <	0.0002
	Dissolved	<	0.0002	0.0002 <	0.0002 <	0.0002 <	0.0002	0.0003
Antimony	Total	<	0.005 <	0.005	0.005 <	0.005 <	0.005 <	0.005
_	Dissolved	<	0.005 <	0.005	0.005 <	0.005 <	0.005 <	0.005
Sulfate			91	113	134	133	143	143

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\*All resumits are in PPM







REFINED METALS BEECH GROVE, MOIANA

FIGURE 1 SITE LAYOUT WAP RCI +1-8587.01

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## CONFIDENTIAL COMMUNICATION FOR SETTLEMENT PURPOSES ONLY

April 24, 1991

## BY HAND

CTHED OFFICES

HOUSTON

CALLAS

JS ANGELES

Daniel S. Jacobs, Esq.
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044

Re: United States v Refined Metals Corp., Civil No. IP 90 2077C (S.D. Indiana)

Dear Mr. Jacobs:

On behalf of Refined Metals Corporation ("Refined Metals"), we submit the following response to your settlement proposal dated March 8, 1991, in which you propose that Refined Metals pay a penalty of \$3,127,368.00 in order to settle the above-referenced matter.

Refined Metals believes that your penalty demand is unwarranted and excessive. The penalty demand is unwarranted because, as discussed below, Refined Metals had already corrected or was in the process of correcting the majority of the violations alleged in the United States' complaint before that complaint was even filed. The remaining alleged violations, to the extent they exist, could be addressed by the company after it ascertains the basis of those allegations in future settlement discussions. The government's penalty demand is excessive in light of the fact that it is higher than the highest penalty ever imposed by a court, under the most egregious circumstances, and is 72 times greater than the average RCRA penalty imposed in 1989.

Despite the unreasonableness of the government's penalty demand, Refined Metals is committed to settling this case in order to avoid expending

M. Lavelle, "Entorcement and the EPA," National Law Journal, September 24, 1990 at 49

unneccesary time and resources on litigation. To that end, the company proposes paying the amount of \$600,000,000 to include all penalties and costs in this case, based on the Company's understanding that the projected remedial costs are not of a significant amount. The terms of this payment are outlined below. By offering to pay a substantial penalty as well as committing to address other unresolved matters at the Beech Grove site, the company believes that this settlement proposal more than fully redresses all of the alleged violations made by the United States in this action.

## 1 Background

Refined Metals operates a lead recycling facility in Booch Grove, Indiana, at which valuable lead and other resources are reclaimed from spent lead acid batteries and other lead-bearing scrap materials. Approximately 80 million spent lead-acid batteries are generated nationwide each year. Without lead recycling facilities such as the Beech Grove facility, spent lead-acid batteries and other lead-bearing scrap could pose a significant threat to the environment if disposed of in landfills, incinerators, roadsides, abandoned property or waterways. The recycling of spent lead-acid batteries and other lead-bearing scrap is the most environmentally sound disposition of these materials. In fact, due to the dramatic decline in the number of battery recyclers since 1980, EPA is currently developing strategies to keep this important industry viable

The current owners of Refined Metals bought the company from Exide Corporation in March 1984. Since the current ownership purchased the facility in 1984, it has expended a considerable amount of money for capital improvements. For example, in 1987, Refined Metals began working on a new waste water treatment system which became fully operational in 1989. The system, which cost approximately \$750,000 to design and install, collects and treats all process water, discharging it into the City's sewer system after treatment. The system also allows the company to perform extensive washdowns of its equipment to minimize fugitives as well as to collect and treat non-contact water. The Company has installed new and extensive air pollution control devices under current management. In short, the company has spent a considerable amount of time and resources to control emissions from the production processes of its Beech Grove facility.

## II. The Alleged Violations by Refined Metals

In its complaint, the United States alleges five claims against Refined Metals: the first claim alleges that the company is operating its Beech Grove facility without a RCRA permit; the second claim alleges a failure to submit a closure plan, to demonstrate financial assurance and to acquire sudden accident liability insurance; the third claim alleges twelve violations of state regulations; the fourth claim alleges releases of hazardous waste requiring corrective action; and the fifth claim alleges violations of the state SIP for total suspended particulate matter and lead

Refined Metals had already corrected the majority of these alleged violations before the complaint was even filed in this case. For example, the complaint alleges that the company failed to submit a closure plan pursuant to IAC 3 21-3. See Complaint ¶ 41. Yet, prior to the filing of the complaint, Refined Metals had submitted a closure plan to the State of Indiana, in conjunction with its Part R application. Similarly, the United States has alleged that Refined Metals failed to

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Daniel S. Jacobs, Esq April 24, 1991 Page 3

ANDREWS & KURTH

demonstrate financial assurance for closure pursuant to IAC 3-22. Yet, the company did so in October 1989, and included this assurance as part of its Part B permit application. A groundwater monitoring network was installed in 1990; analyzes of samples collected from that system indicate no significant impact on groundwater from plant operations.

Other alleged violations were addressed soon after the complaint was filed. The complaint alleges that Refined Metals failed to acquire sudden accident liability insurance pursuant to IAC 3-22. See Complaint ¶ 42. The company obtained insurance in January 1991.

Other allegations are simply too ambiguous for the company to address at this time without further information from the government. For example, the government alleges that the company caused the release of hazardous wastes into the environment. See Complaint TI 60, 61. Without knowing what releases allegedly occurred at the site, Refined Metals cannot address those releases. Nonetheless, the company is committed to correct those alleged violations where appropriate, subject to cooperation from the United States and its agencies.

In short, Refined Metals is willing to redress whatever violations the company has not previously corrected. One example of this commitment is the Company's willingness to enclose the blast furnace area under negative pressure and direct all fugitives to a baghouse system. This willingness and the earlier efforts made to correct alleged violations should serve as evidence of Refined Metal's good faith to redress any and all violations that may have arisen in the past.

## III. The Penalty Sought Against Refined Metals

In your March 8, 1991 settlement proposal, you propose that Refined Metals pay a penalty of \$3,127,368.00 in order to settle this case. The excessiveness of this settlement demand is patent when one considers:

- that the highest RCRA penalty ever imposed by a court, under the most egregious circumstances, is not as high as the settlement amount that the government seeks in this case;
- that the average penalty in a RCRA case is approximately \$43,000.00.

The government does not offer any reasonable basis for seeking such a penalty, instead devoting its March 8 letter to a discussion of a purely abstract multiplication of days and dollars. Refined Metals believes that any penalty should be based upon a pragmatic consideration of the actual threat to human health and the environment, the company's good faith in attempting to comply with the state and federal statutes and regulations, the extent to which the alleged violations have already been corrected, and the willingness of the company to redress any violations not previously corrected. To that end, we note that the most recent written communication from the State of Indiana discloses that IDEM considers the facility to currently have interim status.

Daniel S. Jacobs, Esq. April 24, 1991 Page 4

ANDREWS & KURTH

With those considerations in mind, Refined Metals proposes the payment of \$600,000.00 to settle this matter. This payment would include all penalties, fees and costs sought by the United States and would be paid over a four-year period. Prior to finalizing any agreement, we would need to discuss the scope and costs associated with any remedial activities. The initial payment of \$100,000 would be remitted within sixty days of settlement. A fixed rate interest rate of 7 percent would be calculated on the running balance over the four-year payment schedule. This payment schedule is predicated on cash flow projections calculated for the company over the next four years.

Refined Metals believes that expending additional time and resources to conduct discovery and further litigate the United States' claims will serve only to harden each side's position. A prompt settlement will save both parties considerable time and expense and will allow Refined Metals immediately to address the government's concerns. With the recent and dramatic decline in the lead market and the projections of difficult economic times ahead for the entire industry, Refined Metals wishes to move promptly to put this matter to rest.

To this end, the company proposes meeting to discuss this settlement offer at your earliest convenience and, preferably, before depositions begin and additional discovery resumes in this action. Please give us a call at (202) 662-2700 if you wish to discuss this matter.

Sincerely, Set Wittensen

Robert N. Steinwurtze Thomas R. Lotterman

cc: Mr. T.W. Freudiger Thomas E. Kieper, Esq. Thomas Jacobs, Esq.

David Dabertin, Esq.

DJ 90-11-2-469 EPA Region V S.D. Indiana PRIVILEGED: FOR INTERNAL DOJ/EPA USE ONLY

## UNITED STATES V. REFINED METALS CORPORATION

## Case Management Plan

## Legal Staffing:

DOJ: Dan Jacobs, EES Tom Kieper, AUSA

EPA: Tom Jacobs, ORC (RCRA)
Dave Dabertin, ORC (Air)

## Technical Staffing:

EPA: Joe Boyle (RCRA) Jon Adenuga (RCRA) Farro Assadi (Air)

## I. General Breakdown of Case Responsibilities

- A. Overall case management responsibilities and supervision, and general oversight (Jacobs, D.); U.S. Attorney and Court liaison (Kieper); EPA coordination and oversight (Jacobs, T.)
- B. Principal contact with Defendant (Jacobs, D.)
- C. Principal negotiator (Jacobs, D.)
- D. Principal contact with IDEM (Jacobs, T.)
- E. Development of Proof (Jacobs, T.; Dabertin)
- F. Selection and preparation of experts (Jacobs, T. & D.)
- G. Litigation support: coordination/budget (Jacobs, D.)

## II. Discovery Responsibilities and Schedule

- A. Offensive Discovery (Jacobs, D.)
  - 1. Document Request (Jacobs, D.) (11/30/90) Barban Rigers
    - a. document review (Jacobs, T.; Boyle/Adenuga)
  - 2. Inspection (Jacobs, T.) will want to cover all media
  - 3. Interrogatories (Jacobs, T & D.)

reguest to site land Rule 34. need 30 days Notice to Defendant

Ex 5-18 Harney-Cl Athorney W.P. Ex. 7 Enforcement

- Depositions (Jacobs, T. & D.)
- Richard Lee Swain (president)

  Wilmiam Freudiger (v.p.) 1985 Thomas Bingham (former plant manager) /990-74. Ron Widner (plant manager) Stanley Peter (former ? plant engineer)
  - Admission requests (Jacobs, T. & D.)
  - Informal interviews
- B. Defensive Discovery (Jacobs, T.)
- C. Discovery-related motions (Jacobs, D.)
  - Offensive (Jacobs, D.)
  - 2. Defensive (Jacobs, T.)

## III. Motions

- Offensive (Jacobs, D.)
  - 1. U.s. Motion for Summary Judgment (Jacobs,
  - U.S. Motion to Strike Defenses (Jacobs, T. & D.)
- Defensive (Jacobs, T.)

## IV. Settlement

- U.S. Position
  - Formal clarification of EPA penalty position
- B. Negotiations

1st "edition" 11/21/90 dsj

## PENALTY CALCULATION #4 TOTAL OF \$2,564,868

## BEN CALCULAN

- 1. financial assurance for closure \$67,465 40 CFN 265.142.147
- 2. insurance-nodem occurrence 1,121,153
- 3. RCRA \$3005 1,353,750
- 4. 40 CFR 265.112 no submission of closure plan
  un 15 cruss of loss of interim
  status

  87,564,868

Ex 7- End. Cont.

**ENFORGEMENT CONFIDENTIAL** 

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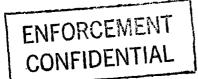
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ENFORCEME ....



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5 77 WEST JACKSON BOLILEVARD CHICAGO, IL 60604-3590



REPLY TO THE ATTENTION OF.

non-responsive

FOIA EXEMPT -- INTERAGENCY COMMUNICATION

## 8. Date Regional Administrator Signed Referral Request

## 9. <u>Identity of Lead Regional Personnel</u>

Victor A. Franklin (5C-TUB-3) Assistant Regional Counsel U.S. Environmental Protection Agency 230 South Dearborn Street Chicago, Illinois 60604 (FTS) 353-6124

Jonathan Adenuga (5HR-12) Hydrologist U.S. Environmental Protection Agency 230 S. Dearborn Street Chicago, Illinois 60604 (FTS) 886-7954

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### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

### REGION V

### LITIGATION REFERRAL

Referral of Civil Action pursuant to Section 3008 of the Solid Waste Disposal Act (SWDA), as amended, 42 U.S.C. Sections 6901-6991(j) also referred to as the Resource Conservation and Recovery Act (RCRA).

Defendants: Refined Metals Corporation, Inc.

Facility: Refined Metals Corporation, Inc.

3700 S. Arlington Avenue Indianapolis, Indiana 46203

RCRA ID# IND000718130

## Regional Contacts:

Victor A. Franklin
Assistant Regional Counsel
Office of Regional Counsel
Region V
U.S. Environmental Protection Agency
230 S. Dearborn Street
Chicago, IL 60604
(FTS) 353-6124

Jonathan Adenuga
Hydrologist
Technical IL/IN Enforcement Section
RCRA Enforcement Branch
Region V
U.S. Environmental Protection Agency
230 S. Dearborn Street Chicago, IL 60604
(FTS) 886-7957

### SYNOPSIS OF CASE

Refined Metals Corporation, Inc. (RMC) began operation of its facility in 1979 as an operator of a secondary lead smelter. RMC reclaims lead from spent lead-acid batteries, scrap metal, sludge and lead bearing raw materials and processes it into refined lead alloys. Spent batteries are stored in waste piles prior to processing. Processing takes place by feeding the batteries and other lead bearing waste materials into a blast furnace from which the melted lead is extracted and formed into lead ingots as the final product.

On August 18, 1980, RMC notified U.S. EPA (EPA) of hazardous waste activity as a generator only (Attachment B). On November 19, 1980, RMC submitted its Part A application (Attachment C) identifying the facility as one which treats, stores or disposes of hazardous waste. Having submitted a notification and Part A permit application, RMC, by operation of law, achieved interim status. However, this application RMC submitted did not contain process codes or design capacities, for any treatment, storage or disposal of hazardous substances nor did it designate the method of hazardous waste management (e.g. waste pile, landfill, surface impoundment).

In March of 1984, RMC requested in a letter (Attachment D) to EPA a modification of its Part A permit, essentially seeking to change its status as a treatment, storage or disposal (TSD) facility of hazardous waste to that of a generator. A modified Part A application was attached to this letter reflecting this

request (See Attachment E). RMC claimed that since neither slag produced as a result of the reclaiming process nor emission control dust was stored over 90 days at facility, it was not subject to the treatment, storage or disposal regulations of RCRA. Moreover, RMC alleged that the slag produced by the secondary blast furnace did not meet the criteria for hazardous waste for the reason that it was not EP toxic.

In a letter dated April 24, 1984 (Attachment F), EPA responded to RMC's request by informing RMC that to change its status from a TSD facility to that of a generator it would have to go through formal closure of its facility pursuant to the applicable RCRA regulations. To date, RMC has not undergone any formal closure of its facility.

The Indiana Department of Environmental Management (IDEM) and EPA have conducted several inspections of the RMC facility. State inspections conducted in July of 1984 and June of 1985, (See Attachments G and H) revealed the presence of hazardous waste stored in waste piles at the facility.

EPA conducted an inspection in February of 1987. (See Attachment O). That inspection revealed the presence of gray puddles in and around the facility. These gray puddles were indicative of lead contamination although samples were not collected for analysis during this inspection 1/

The June 18, 1985 inspection resulted in IDEM issuing an

<sup>1/</sup> At the time of this report additional sampling of facility has been scheduled. It is expected to take place in the spring of 1989.

administrative complaint on December 19, 1985, Cause No. N-283

(Attachment I). IDEM's complaint cited RMC for numerous violations of RCRA including a failure to notify the State of hazardous waste storage in containers and waste piles. An answer was filed by RMC in this administrative matter (Attachment J); however, to date the matter remains unresolved.

RMC filed a second amended Part A permit application in July of 1985 (Attachment K). This Part A application identified storage of hazardous wastes in waste piles at the facility. The stored waste were listed as corrosive waste and EP toxic for lead with, EPA hazardous waste numbers D002 and D008 respectively.

As a result of a record review of the compliance status of RMC with applicable IDEM and RCRA regulations conducted by the IDEM, RMC was issued a letter of warning dated March 26, 1987 by IDEM specifying that RMC had failed to demonstrate financial assurance for closure and had failed to submit proof of liability coverage as required for TSD facilities. (See Attachment L). A follow up inspection conducted on August 12, 1987 by IDEM uncovered additional violations of Indiana law not a subject of this referral. (See Attachment M).

RMC's interim status for storage in waste piles indicated by its second amended Part A application of July 1985 terminated on November 8, 1985. This termination came about by operation of law because RMC did not certify that the facility was in compliance with all applicable financial responsibility requirements of RCRA. Specifically, RMC failed to obtain any sudden insurance as required

for all interim status TSD facilities. Waste piles are not subject to the interim status groundwater monitoring requirements.

Despite its loss of interim status (LOIS), RMC continues to operate its facility. Such operation without benefit of interim status is a clear violation of RCRA.

IDEM laboratory results from samples taken from the facility on November 21, 1985 (Attachment N) document releases of hazardous wastes, specifically lead, arsenic and cadmium into the environment in and around RMC's facility. A follow up visual inspection conducted by EPA in February of 1987 (Attachment O) confirmed storage in waste piles at the facility. Additionally, though samples were not taken, the EPA inspector observed grayish looking soil and puddles in and around the facility indicative of the presence of lead.

This civil litigation report requests the initiation of a civil action against RMC pursuant to Section 3008(a) 42 U.S.C. 6928(a) of RCRA for violations of Section 3005 42 U.S.C. 6925 and the implementing regulations. A corrective action order pursuant to Section 3008(h), 42 U.S.C. 6928(h) is also requested here.

With respect to the Section 3008(h), 42 U.S.C. 6928(h) corrective action count, we recommend that the Government seek a permanent injunction requiring RMC to do the following: (1) prepare and implement a RCRA Facility Investigation/Corrective Measures Study; (2) preparation of a plan to cleanup the hazardous waste contamination at the site; and (3) comply with all applicable RCRA regulations.

With respect to RMC's Section 3005(e)(2) loss of interim status we recommend that the government seek a permanent injunction which would prohibit RMC from storing or disposing of additional hazardous waste in the waste pile units at the facility, and require RMC to (1) submit a closure and post-closure plan for the facility, (2) comply with applicable financial requirements through closure and post-closure, (3) close, and (4) apply for a post-closure permit. We also recommend that the Government seek civil penalties under Section 3008(a) and/or 3008(g) against RMC for operating without a permit after termination of interim status.

## **DESCRIPTION OF DEFENDANTS**

RMC, a subsidiary of Exide Corporation, Inc. operates a secondary lead smelting facility located in Indianapolis, Indiana. (See Dunn and Bradstreet Report attached as Attachment P). RMC also is the owner of the property on which the facility is situated. (See Title Search Attachment T). RMC's primary business is to reclaim usable lead from spent lead-acid batteries, and to form the reclaimed lead into ingots. The facility consists of the following areas: (1) an indoor process treatment tank used to neutralize liquid from batteries, (2) a battery storage area, (3) an indoor waste pile - materials warehouse used to store crushed batteries, off-specification battery paste, slag and waste materials, (4) a baghouse used to collect and store flue gas

emissions from the blast furnace, and (5) a blast furnace. 2 A detailed description and photographs of these areas are provided in Attachment O.

Pursuant to 40 C.F.R. 260.10, the waste piles at RCM constitute hazardous waste management units that are used to store and treat non-containerized hazardous waste.

Richard L. Swain is the president of the subsidiary.

Place of Incorporation: Delaware

Agent for Service of Process:

C.T. Corporation

1 North Capitol Street Indianapolis, IN 46204

Present Legal Counsel:

Judith E. Overturf, Esq. Harrison & Moberly 333 N. Meridan Street Indianapolis, IN 46204

<sup>2/</sup> An additional outdoor waste pile consisting of plates and groups of lead bearing material was observed during a preliminary scoping of anticipated sampling activity in January of 1989.

## LEGAL BASIS FOR THE PROPOSED ACTION

Section 3008(a) of the Solid Waste Disposal Act (SWDA), as amended, 42 U.S.C. 6928(a), gives EPA the authority to file suit in federal district court for violations of Sections 3001 through 3019 of SWDA.

Section 3005(a) of the SWDA 42 U.S.C. 6925(a), directed EPA to promulgate regulations requiring each person owning or operating an existing hazardous waste treatment, storage or disposal facility to have a permit and prohibited the disposal of hazardous waste without such permit:

Not later than eighteen months after the date of the enactment of this section, the Administrator shall promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed in this subtitle to have a permit issued pursuant to this Section. Such regulations shall take effect on the date provided in Section 3010 and upon and after such date the treatment, storage, or disposal of any such hazardous waste is prohibited except in accordance with such a permit. 42 U.S.C. 6925(a).

Regulations at 40 CFR 270.1(b) prohibited the treatment, storage, or disposal of hazardous waste without a permit beginning November 19, 1980.

Under Section 3005(e), 42 U.S.C. 6925(e) a facility owner or operator would be considered to have been issued a permit prior to final disposition of a permit application if he or she met the criteria for interim status provided in Section 3005(e)(1)(A)-(C) 42 U.S.C. 6925(e)(11)(A)-(C):

(e) Interim Status. -- (1) Any person who:

- (A) owns or operates a facility required to have a permit under this section which facility:
- (i) was in existence on November 19, 1980 or
- (ii) is in existence on the effective date of statutory or regulatory changes under this Act that render the facility subject to the requirement to have a permit under this section,
  - (B) has complied with the requirements of Section 3010(a), 42 U.S.C. 6930(a) and
  - (C) has made an application for a permit under this section shall be treated as having been issued such permit until such time as final administrative disposition of such application is made, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. Section 3005(e)(1)(A)-(C), 42 U.S.C. 6925(e)(1)(A)-(C).

The owner or operator could satisfy Section 3010(a), as required by Section 3005(e)(1)(B), 42 U.S.C. 6925(e)(1)(B) by submitting to EPA (or the authorized state) information concerning the facility's location, general activity, and identified or listed wastes handled at the facility. As provided in 40 CFR 270.1(b) the owner or operator could satisfy Section 3005(e)(1)(C), 42 U.S.C. 6925(e)(1)(C) by submitting a part of the permit application, called "Part A". See generally, 40 CFR Sections 270.10 and 270.70.

On November 8, 1984, Section 3005(e)(2), 42 U.S.C. 6925(e)(2) was added by the Hazardous and Solid Waste Amendments of 1984 to prohibit operation of existing land disposal units after November 8, 1985 (one year after enactment of the amendments) unless the owner or operator complied with two requirements:

- (2) In the case of each land disposal facility which has been granted interim status under this subsection before the date of enactment of the Hazardous and Solid Waste Amendments of 1984 (November 8, 1984), interim status shall terminate on the date twelve months after the date of the enactment of such Amendments unless the owner or operator of such facility:
  - (A) applies for a final determination regarding the issuance of a permit under subsection (c) for such facility before the date twelve months after the date of the enactment of such Amendments; and
  - (B) certifies that such facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements. 42 U.S.C. 6925(A)-(B).

An owner or operator satisfies part of Section 3005(e)(2)(A), 42 U.S.C. 6925(e)(2)(A) by submitting the second part of the permit application, known as "Part B". See Notice of Implementation and Enforcement Policy, 50 Fed. Reg. 38946 (September 25, 1985) (Loss of Interim Status) (Attachment U). The Part B requirements are specified at 40 C.F.R. Sections 270.1(6) and 270.14 thru 270.21 (or the equivalent state regulations in the case of an authorized state). In addition, the owner or operator must certify that it is in compliance with applicable groundwater monitoring (not applicable for waste piles) and financial responsibility requirements. In this case, Indiana is an authorized state, so the applicable financial requirements are found at state regulations 320 IAC 4.1-22. The applicable liability coverage portions of the regulations are appended as Attachment Q.

In 50 Fed. Reg. 38946 (September 25, 1985), EPA interpreted Section 3005(e)(1), 42 U.S.C. 6925(e)(1) to mean that a facility may choose to certify compliance with financial assurance requirements for individual units rather than for the entire

facility. If a facility certifies compliance for some units but not for others, interim status is terminated only for those units for which no certification was submitted.

The owner or operator must also submit a closure plan 15 days after termination of interim status, as specified in 40 CFR Section 265.12(c). Interim status for those facilities that did not comply with Section 3005(e)(2), 42 U.S.C. 6925(e)(2) of SWDA terminated on November 8, 1985 and their closure plan must have been submitted by November 23, 1985.

The statutory provisions which support the additional requested relief of preparation and implementation of a remedial investigation/corrective action study and preparation of a plan to clean up the hazardous waste contamination at the site are found in Sections 3008(a) and (h) of SWDA, 42 U.S.C. 6928(a), and (h).

Section 3008(a) 42 U.S.C. 6928(a) of the SWDA gives EPA the authority to file suit in federal district court for violations of Sections 3001 through 3019 of SWDA. Section 3008(h), 42 U.S.C. 6928(h) gives the Administrator, upon a determination that there has been a release of hazardous waste into the environment, the authority to issue an order requiring corrective action or such other response as the Administrator deems necessary. The pertinent portions of Section 3008(h), 42 U.S.C. 6928(h) are set out below:

<sup>(1)</sup> Whenever on the basis of any information the Administrator determines that there is or has been a release of hazardous waste into the environment from a facility authorized to operate under Section 6925(e) of this title, the Administrator may issue an order requiring corrective action or such other response measure as he deems necessary to protect human health or the environment or the Administrator may commence a civil action in the United States district

court in the which the facility is located for appropriate relief, including a temporary or permanent injunction.

## ELEMENTS OF PROOF AND AVAILABLE EVIDENCE

- A. Proving a violation of Section 3005(e), 42 U.S.C. 6925(e) requires proof of the following elements:
  - 1. "Storage of hazardous waste" after November 8, 1985
    - a. EPA and IDEM inspectors will testify that they visited RMC's facility on February 24, 1987 and saw piles of waste materials stored in the materials storage building. Of those materials stored, the inspectors will testify that they saw battery scraps, off-specification battery paste, dust and sludge from the bag house, emission control dust (EPA hazardous waste number KO69), flue dust and dross, and slag from the furnace.
    - b. Evidence available includes the inspector's affidavit and testimony and RMC's Part A Application. (See Attachment R). Photographs are also available from the inspection. (See Attachment O).
    - c. Additional evidence which could be obtained through discovery includes testimony by facility workers, plant records and waste samples. The federal regulations at 40 CFR Part 261.32 (320 IAC 4.1-6.3) lists wastes which are hazardous. RMC currently accepts EPA numbers D002 and D008.
    - d. Witnesses: U.S. EPA Judy Kleiman, IDEM Dave Koepper
      - Potential adverse witnesses include Ron Widner President RMC, Thomas Bingham Plant Manager RMC.
- 2. The government must prove that the facility did not have a final RCRA permit or interim status. The government must prove that the facility's interim status was terminated by operation of Section 3005(e)(2), 42 U.S.C. 6925(e)(2). An analysis of those elements of proof follows in 3 through 5.
  - a. After November 8, 1985, EPA and the state reviewed

defendant's records and determined that defendant submitted a new Part A application in July 1985 but has not applied for or received a final permit.

- b. Evidence available includes affidavits or testimony from the persons in the state and EPA Regional RCRA program who are custodians of records for documents submitted pursuant to Section 3005(e)(2), 42 U.S.C. 6925(e)(2).
- c. Witnesses: EPA custodian of records Augusta Bloom Information Section Program Management Branch, Office of RCRA U.S. EPA Region V
- 3. The government must prove that the unit or units in question at the facility are land disposal units. The term "land disposal" is defined in Section 3004(k), 42 U.S.C. 6924(k) to include the placement of hazardous waste in units including but not limited to a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, or underground mine or cave. This definition encompasses defendant's units.
  - a. EPA has reviewed RMC's Part A permit which states that the facility stores hazardous waste at its facility. EPA and IDEM inspectors also observed the storage of hazardous waste in waste piles at the facility on February 24, 1987.
  - b. Evidence available includes the Part A permit application which states that the facility stores hazardous waste in waste piles, and affidavits and testimony from EPA and IDEM inspectors. (Attachment R).
  - c. Witnesses: EPA's Judy Kleiman, IDEM's Dave Koepper, EPA Custodian of Part A Permits, Augusta Bloom.
- 4. "Granted interim status under this subsection before the date of enactment of the Hazardous and Solid Waste Amendments of

- 1984". The government must prove that the facility was granted interim status under Section 3005(e)(2), 42 U.S.C. 6925(e)(2) before November 8, 1984.
  - a. EPA reviewed its records and determined that RMC submitted its Section 3010, 42 U.S.C. 6930 notification on August 18, 1980 and its original Part A application on November 19, 1980.
  - b. Evidence available includes the facility's notification under Section 3010(a), 42 U.S.C. 6930 and its Part A application. (Attachments B and C).
  - c. Witnesses: EPA Custodian of Records, Augusta Bloom.
- 5. That certification for the applicable financial assurance requirements was never submitted.
  - a. The state reviewed its records and determined that RMC never submitted certification of compliance for sudden and nonsudden liability coverage, during the period from November 8, 1985 to the present. The IDEM sent notice of violation in this regard on March 26, 1987. (Attachment L).
  - b. Evidence available includes testimony by the state's financial assurance analyst.
  - c. Witnesses: Jeffrey Stevens
    Financial Assurance Analyst/Custodian
    of Records
    Indiana Department of Environmental
    Management
- 6. No submittal of closure plan. The Government must prove that the defendant did not submit to the state a closure plan by November 23, 1985.
  - a. The State and EPA reviewed their records and determined that defendant did not submit a closure plan (other than that required to be maintained at the facility pursuant to 320 IAC 4.121-3(40 C.F.R. Section 265.108)) by November 23, 1985 following the loss of interim status.
  - b. Evidence available includes affidavits from the

record custodians of the state and EPA who are designated to received closure plans.

c. Witnesses: Gladys Beard

Environmental Protection Assistant Program Management Branch, Office of

RCRA

Information Section U.S. EPA Region V

## B. Claim Under RCRA Section 3008(h): Corrective Action

Proving the elements necessary to bring a claim for corrective action under Section 3008(h), 42 U.S.C. 6928(h) requires proof of release of hazardous wastes into the environment. This proof is contained in the analyses of the samples taken by IDEM in November Sampling results which appear as Attachment N, clearly show that such hazardous waste was released to the environment. Operational activities at this facility include the use of water as a dust control measure. The water which comes in contact with the waste piles has the potential to leach out lead and other metals. This resulting liquid constitutes what is known as leachate. This leachate is allowed to flow uncollected onsite contaminating extensive areas of the facility. Proof of soil contamination at the facility, is contained in the analysis of samples taken by IDEM in November of 1985. The soil samples were analyzed for both total and EP toxicity metals. The results indicated that samples taken from the soil at the RCM Facility were EP toxic for lead.

# **ENFORCEMENT HISTORY**

## A. Contact with U.S. EPA

On August 18, 1980, RMC submitted to U.S. EPA a notification of hazardous waste activity pursuant to Section 3010 of RCRA, 42 U.S.C. 6930 (Attachment B).

On November 19, 1980, RMC submitted to U.S. EPA its Part A application. (Attachment C). Subsequent amendments to the Part A were submitted in March of 1984, (Attachment F), and in July of 1985 (Attachment K).

In April of 1984, EPA advised RMC that to obtain generator status, compliance with the applicable regulations was necessary. (Attachment F).

In February of 1987, U.S. EPA conducted a joint site inspection of RMC's facility with IDEM. This inspection confirmed (by sight inspection only) releases of hazardous wastes into the environment from the facility. (Attachment 0).

# B. Contacts with State government

On August 18, 1982, the EPA granted to the State of Indiana, Phase I Interim Authorization to administer the RCRA, hazardous waste program as provided by Section 3006(b)(1), 42 U.S.C. 6926(b)(1) of RCRA and 40 CFR Part 123, Subpart F (now Part 271, Subpart B). Indiana initially received final authorization on January 31, 1986. (On May 2, 1986, Indiana submitted a program revision identifying a change in the State agency implementing the Federally approved hazardous waste management program. Approval of the new state agency, the Indiana Department of Environmental

Management (IDEM), was published in the October 31, 1986, <u>Federal</u>

<u>Register</u>, (Vol. 51, No. 211.) Final Authorization for Indiana

became effective on December 31, 1986. Indiana is not authorized

to enforce any HSWA requirements, under Section 3006(g) of RCRA, 42

U.S.C. Section 6926(g).

Effective June 30, 1988, the Indiana provisions found at 320 IAC 4.1 were recodified and replaced by 329 IAC 3. See <u>Indiana</u>
<u>Register</u>, Volume II, Number 10, July 1, 1988.

Final authorization requires that the State impose upon hazardous waste management facilities, interim status standards that are substantially equivalent to the federal regulations adopted pursuant to Sections 3004 and 3005 of RCRA, 42 U.S.C. 6924 and 6925.

On December 18, 1981 a routine interim status inspection was conducted, in which defendant was cited for violations of TSD requirements.

On February 26, 1982, a TSD facility inspection was conducted which resulted in the issuance of a notice of violation (NOV) to RMC on April 13, 1983. This NOV cited violations detected during the February 26, 1982 inspection.

On July 13, 1984 a pre-closure inspection was conducted.

On June 18, 1985 an inspection was conducted at the facility that resulted in several violations being cited, including a failure to notify the state of existing waste pile units. As a result of this inspection, an administrative complaint was issued by IDEM (cause number N-283, Attachment I) citing, among other

things, storage of hazardous waste in piles that had not been previously identified. RMC filed its answer to this complaint in January of 1986. (Attachment J).

On March 26, 1987 a warning letter was sent to RMC regarding its noncompliance with financial assurance requirements for TSD facilities.

On August 12, 1987 IDEM conducted a facility inspection and determined that violations cited in the administrative complaint N-283 were still present as well as additional violations of applicable state regulations not a subject of this referral.

#### RELIEF REQUESTED

With respect to the Section 3008(h), 42 U.S.C. 6928(h) claim for corrective action, the Agency seeks a permanent injunction which would require RMC to immediately prepare and implement a RCRA Facility Investigation/Corrective Measures Study and prepare a plan to clean up hazardous waste contamination at the site.

Section 3008(h), 42 U.S.C. 6928(h) of RCRA authorizes the Court to issue an order requiring defendants to take "corrective action" wherever there is evidence that a release of hazardous substances to the environment has occurred. The presence of the hazardous substances in the soil in and around the facility demonstrates that such a release has occurred. Furthermore, it is possible that the released hazardous constituents could move to surface water discharge points, or leach into the groundwater.

In addition to the right to seek "corrective action" injunctive

relief pursuant to Section 3008(h), 42 U.S.C. 6928(h) RCRA also affords the court broad injunctive powers to enforce the interim status regulations. Section 3008(a)(1), 42 U.S.C. 6928(a)(1) provides that when EPA determines that any person has violated or is violating Subtitle C of RCRA or regulations promulgated thereunder, EPA "may commence a civil action in the United States District Court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction." 42 U.S.C. Section 6928(a).34

With respect to the Section 3005(e)(2), 42 U.S.C. 6925(e)(2) loss of interim status violation, the Agency seeks a permanent injunction4 which would prohibit RMC from storing or disposing of additional hazardous waste into waste pile units at the facility and require RMC to (1) submit a closure and if necessary a post-closure plan, (2) comply with applicable financial requirements through closure and if necessary, post closure, (3) close the waste pile units, and (4) apply for a post-closure permit if necessary.

<sup>3/</sup> Given the limited amount of sampling done at the site, a motion for a preliminary injunction would be premature at this time, if irreparable harm were considered necessary to go forward with the motion. However if additional sampling should indicate groundwater contamination at the site, a motion for a preliminary injunction should be considered.

Since RMC did not certify compliance with the financial assurance requirements of Section 3005(e)(2) of RCRA prior to November 8, 1985, they can not obtain interim status for the waste pile unit(s). Therefore by operation of law they must stop storing or disposing of hazardous waste in waste piles. Judicial action seeking enforcement of the statutory regulations is therefore judicially more efficient than a preliminary injunction action requiring RMC to stop. However, coupled with evidence of releases into groundwater (see footnote 1) a preliminary injunction action should be considered.

Finally, the Agency also seeks civil penalties under 3008(a) and/or (g) against RMC for operating without a permit.

## PENALTIES

The Agency recommends that a civil penalty be assessed against RMC in the amount of up to \$25,000 per day beginning November 9, 1985 pursuant to RCRA Section 3008(g), 42 U.S.C. 6928(g). This maximum penalty is justified because the violation is major and the extent of deviation from the statutory or regulatory requirement is major, and because RMC did not certify compliance with financial assurance requirements. A penalty calculation for settlement purposes is appended as Attachment S.

## SIGNIFICANCE OF REFERRAL

Seeking judicial enforcement against RMC is in accord with the Agency strategy issued on October 16, 1985 to implement Section 3005(e)(2), 42 U.S.C. 6925(e)(2) regarding the termination of interim status of land disposal facilities. RMC operates and continues to operate its waste pile units even though it has lost interim status. Of greater significance, however, is the documented release of hazardous substances in and around the facility. Such a release provides a significant threat to human health and the environment. The Government's action with regard to relief requested pursuant to Section 3008(h), 42 U.S.C. 6928(h) of RCRA, if successful, could have precedential importance.

## LITIGATION STRATEGY

### A. Jurisdiction and Venue

Jurisdiction is based on Section 3008(a) of RCRA, 42 U.S.C. Section 6928(a) and 28 U.S.C. Sections 1331, 1345 and 1355.

Pursuant to 28 U.S.C. Section 1391(b) this civil action may be brought in the Southern District of Indiana, which is the district in which RMC resides and where the claim arose.

# B. Potential for Summary Judgement

This case represents a high likelihood of success on a motion for summary judgement. There is no genuine issue of fact regarding the facility continuing to dispose of hazardous waste at the waste pile or defendant's failure to obtain sufficient liability insurance prior to November 8, 1985. However, as stated in defendants answer to IDEM's administrative complaint, RMC still maintains that it incorrectly characterized itself as treatment, storage disposal (TSD) facility and should only be a generator of hazardous waste. RMC bases this on the fact that originally it only generated EPA hazardous waste number KO69. It claims that since this was a recyclable product and generated and disposed of as part of production, it was exempt from being a RCRA regulated TSD facility. While this argument may have some merit, it is irrelevant due to RMC's July 3, 1985 Part A modification in which RMC affirmatively states that it stores EPA hazardous wastes designated numbers D002 and D008 in waste piles at the facility.

# C. <u>Settlement Potential</u>

The case has a medium potential for settlement. Settlement is probably contingent upon defendant's willingness to expend funds necessary to take whatever corrective action may be necessary to clean up releases of hazardous substances at the site, and the impact closing the waste pile units would have upon the continuing operation of defendant's business. Since at this time the extent of contamination as well as the impact of closing the waste pile units on RMC's business operation is unknown, the probability of settlement at this stage is speculative. Defendant however, is likely to litigate whether its failure to obtain adequate insurance coverage is a defense to any penalty assessment, as well as whether the relief requested by the Government pursuant to a violation of Section 3005(e)(2), 42 U.S.C. 6925(e)(2) and 3008(h), 42 U.S.C. 6928(h) of RCRA is available. Defendant is also likely to litigate whether a release has occurred from its facility.

## D. <u>Discovery</u>

Discovery will be necessary to determine the nature of any efforts defendant may have made to obtain insurance coverage.

Discovery will also be necessary to determine if the facility had insurance not registered with the state. Additional sampling of the soil and groundwater in and around the site should be requested.

Also, interrogatories and requests for admission will be needed to obtain additional information concerning the violation of Section 3008(h) of RCRA and if possible, admissions as to the elements of this case.

# E. Anticipated Defenses and Government Response

The defendant is most likely to assert the same position in its answer in the pending administrative matter with IDEM; that it made a mistake in filling out the Part A application and that it is only a generator of hazardous substances and therefore exempt from TSD regulations. While appealing, this defense is not a legal defense given the Part A modification mentioned in Paragraph B above.

Similarly, defendant may also attempt to argue that the American Mining Congress decision ("AMC") American Mining Congress v. EPA, 824 F.2d 1177 (D.C. Cir. 1987, exempts them from the regulatory process of RCRA for their KO69 waste since this waste is recycled. AMC invalidated EPA's authority to regulate secondary materials reused within an industry's ongoing manufacturing process. EPA however has interpreted this ruling in 53 Fed. Reg. 519, January 8, 1988 (See Attachment W) to not include waste stored after use as is the case with the RMC operation. Moreover since the RMC operation is not closed loop system, (i.e., materials pass in a continuous stream or flow from production process to another, the AMC decision would not be applicable. See AMC at 1191 n.20.

# Resource Needs

It is reasonable to expect a full civil trial of this matter. The resources needed to prepare for and complete a trial of this matter would likely require six to twelve months each of attorney and EPA technical assistance time. The case plan (Attachment V) list the anticipated schedule.

#### INDEX OF ATTACHMENTS

- A. Draft Complaint
- B. RCRA Section 3010 Notification
- C. RMC's Original Part A Permit Application
- D. Letter from RMC to U.S. EPA dated March 84'
- E. RMC's 1st Revised Part A Permit Application
- F. U.S. EPA response to RMC's March 84 letter
- G. IDEM Inspection Report of July 1984
- H. IDEM Inspection Report of July 1985
- I. IDEM Administrative Complaint N-283
- J. RMC's Answer to IDEM Administrative Complaint N-283
- K. RMC's 2nd Revised Part A Permit Application of July 1985
- L. IDEM Letter of Warning to RMC's (March 26, 1987)
- M. IDEM Inspection Report of August 12, 1987
- N. IDEM Sampling Results of November 1985
- O. U.S. EPA Inspection Report of February 1987
- P. Dunn and Bradstreet Report for RMC
- Q. State of Indiana financial assurance requirements
- R. Affidavits
- S. Penalty Calculations
- T. Title Search
- U. 50 Fed. Reg. 38946
- V. Case Plan
- W. Memorandum and Federal Register Notice Interpreting Impact of AMC Case

# UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA

UNITED S	STATES	OF AMERICA Plaintiff,		) )			
V •				, ) )	CIVIL	ACTION	NO.
REFINED	METALS	CORPORATION, Defendant.	INC.	) ) )			
				)			

### COMPLAINT

Plaintiff, the United States of America, by the Attorney General of the United States, and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

# NATURE OF THE ACTION

1. This is a civil action for injunctive relief and for the imposition of civil penalties brought pursuant to Section 3008 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6928, arising from defendants' continued operation of waste piles without a permit or other legal authority, and defendants' violation of the financial assurance requirements. The complaint also seeks an injunction to require defendant to take corrective action to remedy problems caused by the release of hazardous wastes into the environment from defendant's facility.

## JURISDICTION AND VENUE

2. This court has jurisdiction over this action pursuant to 42 U.S.C. Section 6928 and 28 U.S.C. Sections 1331, 1345 and 1355. Venue is proper in the Southern District of Indiana because the violations occurred here.

# REQUIRED NOTICE

3. Notice of the commencement of this action has been given to the State of Indiana pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. Section 6928(a)(2).

## STATUTORY AUTHORITY

- 4. The Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Section 6901 et seq., established a comprehensive federal regulatory program applicable to the generation, transportation, storage, treatment and disposal of hazardous waste.
- 5. Section 3010 of RCRA, 42 U.S.C. Section 6930, and its implementing regulations required all persons who generate, transport, treat, store or dispose of hazardous waste to notify U.S. EPA of such activity by August 18, 1980.
- 6. Section 3005(a) of RCRA, 42 U.S.C. Section 6925(a), prohibits the operation of any hazardous waste facility except in accordance with a permit. Section 3005(a) of RCRA, 42 U.S.C. 6925(e), further provides that a hazardous waste facility that was in existence on November 19, 1980 may obtain "interim status"

to continue operating until final action is taken by EPA or an authorized State with respect to its permit application, so long as the facility satisfies certain conditions specified in that section. Those conditions include filing a timely notice with U.S. EPA that the facility is treating, storing, or disposing of hazardous waste and filing an application for a hazardous waste permit.

- 7. Section 3005(e)(2) of RCRA, 42 U.S.C. Section 6925(e), provides that by November 8, 1985, the owner or operator of a "land disposal facility" that was granted interim status shall: (a) apply for a final determination of its permit application and (b) certify that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements. Section 3005(e)(2) also provides that the failure to meet these requirements on or before November 8, 1985 shall result in the automatic termination of the land disposal facility's interim status.
- 8. Section 3008(h) of RCRA, 42 U.S.C. Section 6928(h), provides that whenever the Administrator determines that there is or has been a release of hazardous waste into the environment from an interim status facility, the Administrator may commence a civil action seeking an injunction to require that corrective action be undertaken.

## APPLICABLE REGULATIONS

9. Section 3004 of RCRA, 42 U.S.C. Section 6924, authorized the Administrator of U.S. EPA to promulgate

regulations establishing performance standards for interim status facilities. These regulations are codified at 40 CFR Part 265.

- authorizes U.S. EPA to approve state regulations that are substantially equivalent to the federal interim status regulations. After such approval, the state regulations are enforced by EPA and the State in lieu of the federal regulations pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. Section 6928(a)(2).
- I interim authorization to promulgate interim status regulations. On January 31, 1986, Indiana received final authority to promulgate interim status regulations. Accordingly, citations herein to applicable interim status regulations are to the regulations promulgated by Indiana.
- implementing regulations, owners and operators who have interim status to operate under Section 3005(a) of RCRA in the State of Indiana must comply with the standards and requirements of Chapter 320 of the Indiana Administrative Code ("IAC"), Article 4.1-22 in operating facilities for the treatment, storage or disposal of hazardous waste.
- 13. Pursuant to 320 IAC 4.1-22-24, owners and operators of hazardous waste facilities must meet certain

financial responsibility requirements to establish financial assurance for liability to third parties.

operators of hazardous waste facilities must develop a written "closure plan" that sets forth the steps necessary to close the facility in a manner that will minimize or eliminate post-closure escape of hazardous material and will minimize the amount of post-closure maintenance required. Under 40 CFR Section 265.112(c)(1) and (d)(3), and 320 IAC 4.1-21-3, the "closure plan" must be submitted to U.S. EPA and the State of Indiana no later than 15 days after termination of interim status.

# DEFENDANTS

- 15. Refined Metals Corporation, Inc. ("RMC") a

  Delaware corporation, owns and operates a hazardous waste storage
  facility in Indianapolis, Indiana (the "RMC facility").
- 16. In the course of the operation of the RMC facility, defendants store "hazardous waste" within the meaning of 320 IAC 4.1-1-6.
- 17. As required by 42 U.S.C. Section 6930, on August 18, 1980 RMC notified the U.S. EPA Administrator that the facility was treating, storing, or disposing of hazardous wastes. Thereafter, as mandated by 42 U.S.C. Section 6925(a) and 40 CFR Section 270.10, on November 19, 1980, RMC submitted Part A of an application for a permit to treat, store, or dispose of hazardous waste at the facility.

Administrator and the submission of the Part A application, RMC was accorded "interim status" by operation of law pending final administrative disposition of its permit application, which allowed it to operate its waste disposal facility pursuant to 42 U.S.C. Section 260.10.

# APPLICABILITY OF RCRA TO DEFENDANT

- 19. RMC is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15), and 40 CFR Section 260.10.
- 20. The wastes stored and disposed of by RMC are listed as hazardous wastes within the meaning of Section 1004(5) of RCRA, 42 U.S.C. Section 6903(5).
- 21. The presence of hazardous wastes at the RMC facility constitutes "disposal" within the meaning of Section 1004(3) of RCRA, 42 U.S. C. Section 6903(3) and "storage" within the meaning of Section 1004(33), 42 U.S.C. Section 6903(33).
- 22. The RMC facility was "in existence" as a facility for the treatment, storage, and disposal of hazardous wastes on or before November 19, 1980 within the meaning of Section 3005(e) of RCRA, 42 U.S.C. Section 6925(e).
- 23. RMC is an "operator" of the RMC facility within the meaning of 40 CFR Section 260.10 because it was responsible for the overall operation of the facility.

24. RMC is an "owner" of the facility within the meaning of 40 CFR Section 260.10 because it owns the land on which the RMC facility is located.

# FIRST CLAIM FOR RELIEF

- 25. Plaintiff realleges and incorporates by reference paragraphs 1-24 above.
- 26. Defendant has never submitted certification of compliance with the applicable interim status financial responsibility requirements.
- 27. Defendant was not on November 7, 1985 in compliance with the applicable financial responsibility requirements set forth at 320 IAC 4.1-22.
- 28. Because defendant was not in compliance with the applicable financial responsibility requirements the facility lost its interim status on November 8, 1985. Any storage or disposal of hazardous waste at the RMC facility after November 8, 1985 in waste piles is unlawful pursuant to Section 3005 of RCRA, 42 U.S.C. Section 6925.
- 29. Defendant has continued after November 8, 1985 to store, or dispose hazardous wastes in waste piles at its facility despite losing interim status, in violation of Section 3005 of RCRA, 42 U.S.C. Section 6925.
- 30. Defendant failed to submit an amended closure plan within fifteen days after termination of interim status.

- 31. For any violation of RCRA, defendant is subject to civil penalties not to exceed \$25,000.00 for each day of each such violations, and injunctive relief to prevent further violations pursuant to 42 U.S.C. Section 6928(a) and (g).
- 32. Injunctive relief is necessary (1) to restrain defendant from the continued storage, or disposal of hazardous wastes in the waste piles at the RMC facility in violation of RCRA, as provided for in 42 U.S.C. Section 6928(a); and (2) to require defendant to implement an amended closure plan within 180 days of approval of the closure plan as provided by 40 CFR Section 265.113.

# SECOND CLAIM FOR RELIEF

- 33. Plaintiff realleges and incorporates by reference paragraphs 1-24 above.
- 34. Pursuant to Section 3008(h) of RCRA, 42 U.S.C. Section 6928, when the Administrator determines that there is or has been a release of hazardous waste into the environment from a hazardous waste disposal facility, the Administrator may commence a civil action for appropriate relief, including a temporary or permanent injunction requiring defendant to take any corrective action necessary to protect human health or the environment.
- 35. The RMC facility has been operated as a hazardous waste treatment, storage or disposal facility on and after November 1, 1980, and had obtained interim status pursuant to Section 3005 of RCRA, 42 U.S.C. Section 6925. Defendant is thus

subject to the requirement of Section 3008(h) of RCRA, 42 U.S.C. Section 6928(h).

- 36. The Regional Administrator, pursuant to authority duly delegated to him by the Administrator, has determined that the following substances have been released from the RMC facility into the environment: lead, cadmium, and arsenic.
- 37. These substances are hazardous wastes or hazardous waste constituents within the meaning of 40 CFR 261.30 et seq. This release has resulted in the contamination of soil in and around the RMC facility and the potential contamination of nearby groundwater and requires corrective action to protect human health and the environment.
- 38. Injunctive relief is necessary to require defendants to determine the nature and extent of the contamination and to clean up all contamination caused by the release from the RMC facility of hazardous wastes or hazardous waste constituents.

WHEREFORE, plaintiff, the United States of America respectively prays that this Court:

- 1. Enjoin defendants from the storage or disposal of any hazardous wastes at its waste pile units at the RMC facility.
- 2. Order defendant to submit an amended closure plan as required by 40 CFR Section 265.112(c)(1) and (d)(3), and 320 IAC 4.1-22-1 et seq., and to complete closure within 180 days of approval of the closure plan.

- 3. Enter a permanent injunction directing defendants to prepare and implement a plan acceptable to EPA to sample, analyze and study the nature and extent of hazardous waste and hazardous waste constituents released from the RMC facility, and if they have affected the groundwater in and around the RMC facility.
- 4. Enter a permanent injunction directing defendants to prepare and implement a plan acceptable to EPA to take all necessary steps to remedy all contamination resulting from the release of hazardous wastes and hazardous waste constituents at the RMC facility, including releases to the groundwater underlying the RMC facility.
- 5. Direct defendant to pay a civil penalty in the amount not to exceed \$25,000.00 for each day of each violation of RCRA and applicable state regulations; and
- 6. Award plaintiff the costs of this action, and such further relief as this Court may deem appropriate.

Respectfully submitted,

ROGER MARZULLA
Acting Assistant Attorney General
Land & Natural Resources Division
United States Department of
Justice
Washington, D.C. 20530

DEBORAH E. DANIELS United States Attorney for the Southern District of Indiana

Assistant U.S. Attorney Southern District of Indiana

Environmental Enforcement Section Land & Natural Resources Division Department of Justice 10th and Pennsylvania Ave., N.W. Washington, D.C. 20530

## OF COUNSEL:

VICTOR A. FRANKLIN
Assistant Regional Counsel
U.S. Environmental Protection
Agency, Region V
230 S. Dearborn Street
Chicago, Illinois 60604

Office of Enforcement and
Compliance Monitoring
Mail Code LE-1345
U.S. Environmental Protection Agency
401 M Street, SW
Washington, D.C. 20460

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# Refined Metals Corporation

March 26, 1984

U. S. Environmental Protection Agency
Region V
P.O. Box A3587
Chicago, Il 60690

Attention: RCRA Activities

Reference: Refined Metals Corp.

P.O. Box 188 Beech Grove, Ind. 46107

3700 S. Arlington Ave. Indianapolis, In. 46203

U.S. EPA ID # IND 000718130 C, PA-9

13

Dear Sir:

The subject corporation submitted on 8-14-80 EPA form 8700-12 advising they were a hazardous waste generator of material per Catergory K069 (40 CFR Part 261,32).

Subsequently on 11-17-80 Part A application was filed (EPA Form 3510-1) but in Part IIE-, the question "Does or will this facility treat, store or dispose of hazardous wastes?" was answered "Yes". This answer, while it was thought to be correct at that time, is now believed to be incorrect.

In completing Form 3, it was clearly noted on Page 4, Section IV "Emission control dust from secondary lead smelting is returned to lead blast furnace as part of feed material. Slag produced in secondary lead blast furnace is disposed to approved off site land fill. Neither of these items are stored for over 90 days".

The slag produced by the secondary blast furnace has been tested and does not meet the criteria for hazardous material under the EPA Toxicity Classification.

In view of the above facts we request that the subject Part A application be modified to show NO in Block II E and that we are permitted to withdraw the application so as to function solely as a generator.

In the 11-17-80 application, the facility owner (Sect.VIII) was incorrectly listed as Exide Corp., P.O. Box 8109 Philadelphia, Pa 19108. The correct facility owner is Refined Metals Corp.



U. S. Environmental Protection Agency

Page 2

Att: RCRA Activities

Re: Refined Metals Corp.
U.S. EPA ID # IND 000718130

A corrected Part A application is attached.

We request that we be permitted to retain our EPA ID number for identification purposes.

Sincerely,

President

LS/

Encl.

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EPA Form 3510-1 (6-80)

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XI. MAP	16 16 177 10		/	
Attach to this application a topographic map the outline of the facility, the location of ea treatment, storage, or disposal facilities, and water bodies in the map area. See instructions XII. MATURE OF BUSINESS (provide a brief descrip-	ch of its existing and present well where it injection for precise requirements	oposed intake and disc its fluids underground.	harge structures, each	of its hazardous waste
Production of Second Refining, Alloying a	dary Lead in B and Casting Le	last Furnace ad		
ULZATIFICATION CONTRACTOR		•		
A. NAME & OFFICIAL TITLE (type or print)	B. BIGNAY			C. DATE SIGNED
Lee Swain, President	191	(Mutter	) 	3-26-84
COMPILE FOR OFFICE USE ONLY			Control of the second	an the Samuel of the Resemble of the



#### UNITED STATES **ENVIRONMENTAL PROTECTION AGENCY** REGION V

230 SOUTH DEARBORN ST. CHICAGO, ILLINOIS 60604

> REPLY TO ATTENTION OF: 5HW-13

APR 2 4 1984

Lee Swain, President Refined Metals Corporation P. O. Box 9009 Memphis, Tennessee 38109

RE: Withdrawal of RCRA Part A Permit Application FACILITY NAME: Refined Metals Corporation

U.S. EPA ID NO.: INDODO718130

Dear Mr. Swain:

This is to acknowledge that the United States Environmental Protection Agency (U.S. EPA) has completed its review of your Part A Hazardous Waste Permit Application and your letter of March 26, 1984, requesting the withdrawal of your permit application. According to the information which you have submitted and information provided by the Indiana State Board of Health, your facility is required to have a Federal hazardous waste permit for storage. and must fully comply with the Interim Status Standards of 320 IAC Article 4.

An option you may wish to pursue is to close the storage facility pursuant to 320 IAC 4-7. You should contact the Indiana State Board of Health, at (317) 633-0176, for information concerning closure.

Please contact Mr. Richard Shandross of my staff, at (312) 886-0986 for assistance, if you have any questions.

Sincerely yours,

Karl J. Klepitsch, Jr., Chief

Waste Management Branch

cc: Thomas Bingham, Plant Manager Indiana State Board of Health Lee Swain, President Refined Metals Corporation P. O. Box 9009 Memphis, Tennessee 38109

RE: Withdrawal of RCRA Part A Permit Application

FACILITY NAME: Refined Metals Corporation

U.S. EPA ID NO.: IND000718130

Dear Mr. Swain:

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Sincerely yours,

Karl J. Klepitsch, Jr., Chief Waste Management Branch

cc: Thomas Bingham, Plant Manager

Indiana State Board of Health

bcc: Lisa A. Pierard, RAIU

Rich Shandlers 514#4

1912

Inspection Report to Follow

. TSD RCRA I	inspection Report	II.
EPA Identification Number: 1 N	00071	8130
Installation Name: Beech Grove	Plant, Refined 1	netals Corp.
Location Address: 3700 S. Ad	instan Ave	
city: Indpls.	ZIP .	46203
Date of Inspection:	ZIPZIPZIP	
Thomas Bingham * Plan	nt Manager	317/787-636
Inspector(s) Agenc	у , ,	Telephone
David Koepper 150	SH/LPC/CMS	317/243-510
. '		
* Please identify correspondence cont	act	
Installation Processes by Process Cod	e (EPA Form 3510-3)	
S01 Container storage S03 Waste File storage	S02 Tank storage S04 Surface impou	
D79 Injection well disposal	D80 Landfill disp	<del>-</del>
D81 Land Application disposal	D83 Surface Impou	
T01 Tank Treatment	TO2 Surface Impou	indment treatment
T03 Incinerator treatment	T04 Other	
If Part A process codes are listed ab involved below.	ove as TO4 please descr	ribe the process
		·
Other activities		
/	•	
Generator		Appendix GN
Transporter		Appendix TR

2. Indicate any hazardous waste processes (by process code and line number on RPA Form 3510-3 page 1 of 5) which appear to be eligible for exclusion per 40 CFR 265.1(c). Provide a brief rationale for the possible exclusion.

2. Type of Facility (	G T TSD based	on inspection	
<ol> <li>Type of Operation, Size of Operation. (hazardous or non-</li> </ol>	Concentrate on		
This facility	resmelts le	ed from scro	p. They will
a single bla	st furnace	for the	smelting and
have several The scrap is	vats for	enriching	the lead.
The scrap is	stored in	piles excep	t for batterie
· · · · · · · · · · · · · · · · · · ·			
٠.			
4. Hazardous Waste Streams/EPA #	Source	Rate	<u>Disposition</u>
Ko69 Baghouse	Banhouse	unknown	reclaimed
			•
		• "	
5. Exempted/Excluded F	azardous Waste St	reams and Reason	for Exemption

On-Site	Amount	How Stored	Comments
K069 Characteristic Sludge (D008) Sintered K069	25 000 165	bin pile	
Characteristic Studge	mixed w/ scrap	bin bile/	draws
(D008) Sintered 6069	50,000 lbs.	bin pile	· · · · · · · · · · · · · · · · · · ·
<u> </u>	<del></del>		
	<del></del>		<del></del>
7. Is the Annual Repor	t Accurate?		······································
8. List Transporters U			
Nothing Sent a	off as have	dous waste	
<b>\</b>	,		
· · · · · · · · · · · · · · · · · · ·	<del></del>		
9. Non-Hazardous			
Waste Streams	Source Ra	ate_	<u>Disposition</u> Southside LF
Slag	2ndary furine		Southside LF
Can the Company Docu Non-Hazardous as Cla		Waste Streams	are
10. Note any non-RCRA V	<u> </u>	nine Domine	in City Saven
Without Pretreatment			In City Sewer
· · · · · · · · · · · · · · · · · · ·			
	· <u>········</u>	<del></del>	
			· · · · · · · · · · · · · · · · · · ·
·			
	<b>(</b>		
		<del></del>	

Plant is not operating today be cause of s maintenance work being some. Major resulting the NS batter of several curoas including the NS batter of Storage area and inside the material oftonge bldg. are scheduled for this G	<u>-</u> ue
maintenance work being some Major resu	urfacing
of several curoas including the NE batte	<u>~</u>
Storage area and inside the material	
Storage bldg, are scheduled for this G	1/Surme
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	<b>-</b> 
	<del>-</del> -
	<del></del>

-		the Regional Administrator/Environmental Hanagement Board been regarding:
	a.	Receipt of hazardous waste from a foreign source?  A0 CFR 265.12(a)  Facility expansion?  N/A
	L	40 CFR 265.12(a)
	b.	Facility expansion?  N/A
	_	40 CFR 270.72(b) Change of owner or operator?
'	c.	40 CFR 265.12(b)
		45 GIA 265.12(B)
		<del></del>
2) (	Gene	ral Waste Analysis:
	a.	Has the owner or operator obtained a detailed
		chemical and physical analysis of the waste?
		40 CFR 265.13(a)1
1	<b>.</b>	Does the owner or operator have a detailed
		waste analysis plan on file at the facility?
	•	40 CFR 265.13(b)
		Does the waste analysis plan contain:
		1. parameters (and rationale for their choice)
		2. test methods
		3. sampling method for representative sample
		4. frequency of analysis (and rationale)
		5. off-site only: waste analysis from generators
		6. Additional waste analysis needed (when a change
		in waste type or process occurs)
		a. <u>265.193 Tanks</u>
		(see above)
		b. 265.225 Surface impoundment
		(same as above)
		c. 265.252 Waste Pile
•		(same as above)
		d. <u>265.273 Land Treatment Facility</u> (same as above)
		e. 265.341 Incinerators (same as above)
		f. 265.375 Thermal Treatment
		(same as above)
		g. 265.402 Chemical, Physical, Biological Treatment
		(same as above)
) 04		
1/0	_ u	natures of waster received are done to determine
06		naturals of wastes received are done to tetermine
<u> ()()</u>	417	UNIS 10 VENEROLD ( WILL TENS)
1	i	

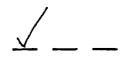
	c.	Does the waste analysis plan specify procedures for inspection and analysis of each movement of hazardous waste from off-site?  40 CFR 265.13(c)
	Ch.	eck loads as a matter of business necessite, it it is what is on packing list or main each "waste" is worth more or less deglared on type.
<u>S</u>	ود_	if it is what is on packing list or many
<u>ac</u>	5 e	ach" waste " is worth more or less deplement
3)	Owne	er or Operator Inspections:
	<b>a</b> .	Does the owner or operator inspect the facility for deterioration, malfunctions, operator errors, and discharges of hazardous waste that may affect human health or the environment?  40 CFR 265.15(a)
	<b>b.</b>	Does the owner or operator have an inspection schedule at the facility?  40 CFR 265.15(b)2
•	с.	If so, does the schedule address the inspection of the following items:  40 CFR 265.15(b)1  i. monitoring equipment?
		ii. safety and emergency equipment?
		iii. security devices (including fences)?
		iv. operating and structural equipment (ie. dikes, pumps, etc.)?
		v. type of problems to be looked for during the inspection (e.g. leaky fittings, defective pump, etc.)?  40 CFR 265.15(b)(2)
		vi. inspection frequency (based upon the possible deterioration rate of the equipment)?  40 CFR 265.15(b)(4)
		·
		•

	vii. <u>Must include</u> :	
		N/0
	/ 1. Weekly container storage?	N/A
	( <u>See 265.174</u> )	N1/0
	2. Daily and Weekly Tank Storage?	N/A
Waste	) ( <u>See 265.194</u> )	
Nar	<ol> <li>Daily freeboard and weekly dike inspection</li> </ol>	
17/25	for surface impoundments?	<u> </u>
12/162	(See 265.226)	
•	4. Landfills, Thermal treatment, Chemical,	
	Physical, and Biological treatment should	•
	be inspected as determined by deterioration	/
	rate and daily at loading and unloading	. 6
	areas (where spills are likely)	<b>√</b> ③ -
	[See 265.15(b)(4)]	<del></del>
	(200 503.13/0//-//)	
đ.	Does Owner or Operator follow the written inspection	- 6
٠.	schedule as outlined?	√( <u>2</u> )
	265.15(b)(1)	
	203.13(0)(1)	
•	Are areas subject to spills inspected	
e.	daily when in use?	$\sqrt{U}$
	· · · · · · · · · · · · · · · · · · ·	<del></del>
	265.15(b)(4)	•
(1) Boom	Laura avea las continues modales un	1 5011000
<u> </u>	house area has continuing problem w	Springe
Not.	d during inspection - also noted a	on facility
		•
14976	ction logs Since 9/13/84 (2) 1151	ted weekly and
record	is monitry) has not been done since 1/15/	85/ (3) Wasterpiles, r
f.	Does the owner or operator maintain an inspection	grecifically
	log or summary of owner or operator inspections?	
	40_CFR_265.15(d)	
g.	Does the inspection log contain the following informat:	ion:/
J	40 CFR 265.15(d)	(i)
	i. the date and time of the inspection?	
	ii. the name ot the inspector?	V
	22. One name of the Inspector.	/
	iii. a notation of the observations made?	· 🗸
	TITE & HOTGETON OF THE ODSELASTIONS MADE:	
•	iv the date and nature of any massing an manadist	
	iv. the date and nature of any repairs or remedial	$\checkmark$
$\widehat{}$	actions?	
(1) A.	ze only	<i>:</i>
<u>_ +u</u>	CUVUM	
	1	
		·

4) D	o personnel training records include:
_	Tab 4841000
8	. Job titles?
ъ	
	40 CFR 265.16(d)(1)
С	
·	40 CFR 265.16(d)2
đ	
•	40 CFR 265.16(d)3
e	
_	40 CFR 265.16(d)4
f	
	i) classroom or on the job/
	ii) within 6 months of hire
٠	iii) annual review of training?
<u>J</u> c	obs are described by function (re furnace feeder) and
Oina	Carecon Mars Land Com Cours Cours of
	person may perform Several. No single ida
۲ ا <b>د</b>	necessarily working w/ Hazavdous waste as
	116 27 3 3 2 4 4 5 4 5 4 5 4 5 4 5 5 5 5 6 5 6 5 6 5
all	of their materials are hygardous.
۸	+ " he aredone maste" into Antier are park
	15+ "hazardous waste" job duties are performed
دول	der direct Supervision of Foreman and are escribed in job duties. One man may perform
	in a duties of
dé	escribed in job auties. One man may perfor
• (	
as	many as 10 sobs.

1) Has the owner or operator attempted to make arrangements with local authorities in case of an emergency at the facility?

40 CFR 265.37



#### CONTINGENCY PLAN AND EMERGENCY PROCEDURES

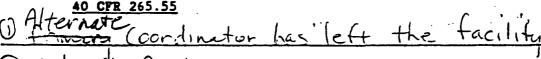
1)	Does the Contingency Plan contain the following	See	plan	on	Tile	from
	information:		•		1982	

- a. The actions facility personnel must take to comply with 265.51 and 265.56 in response to fires, explosions, or any unplanned release of hazardous waste? (If the owner has a Spill Prevention, Control, and Countermeasures (SPCC) Plan, he needs only to amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this Part (as applicable).
- b. Arrangements agreed by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services pursuant to <u>265.37</u>?
- c. Names, addresses, and phone numbers of all persons qualified to act as emergency coordinators?
- d. A list of all emergency equipment at the facility which includes the location and physical description of each item on the list and a brief outline of its capabilities?

  40 CFR 265.52(e)
- e. An evacuation plan for facility personnel where there is a possibility that evacuation could be necessary? (This plan must decribe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes.)
  40 CFR 265.52(f)

# 2) Emergency Coordinator:

- a. Is the facility Emergency Coordinator identified? 40 CFR 265.52(d)
- Is coordinator familiar with all aspects of site operation and emergency procedures?
   40 CFR 265.55
- c. Does Emergency Coordinator have the authority to carry out the Contingency Flan?



@ Only Fire Dept.

(3) No location or capability

3)	<del></del> /-	<u> </u>
4)	Emergency Procedures	<del></del>
4)	Emergency Frocedures	
	If an emergency situation has occurred at this facility, has the Emergency Coordinator followed the emergency procedures listed in 265.56?	-
		·-
		,
MAN	HIFEST SYSTEM, RECORDREEPING, AND REPORTING:	
1)	Use of Manifest System:	-
	a. Does the facility follow the procedures listed in <a href="265.71">265.71</a> for processing each manifest? (Particularly sending a copy of the signed manifest back to the generator within 30 days after delivery.)	
2)	b. Are records of past shipments retained for 3 years?  40 CFR 265.71(b)5  Does the owner or operator meet requirements regarding	
,	manifest discrepancies? (Off-site facilities only)  40 CFR 265.72	_
<u> </u>	saw only one maintest - it had been property 500	ine J

				YES	HO	NI
3)	Oper	ating	Record:	1		
	a.		owner or operator have a operating record? FR 265.73(a)	<u>√</u>	<del></del>	
	ъ.		the owner or operator maintain an operating rd as required in 265.73?	<u> </u>		
	c.		the operating record contain the following rmation:		-	
		i.	The method(s) and date(s) of each waste's treatment, storage, or disposal as required in 40 CFR 265 Appendix I?			)_
		ii.	The location and quantity of each hazardous waste within the facility? (This information should be cross referenced to specific manifest number if the waste was accompanied by manifest.) 40 CFR 265.73(b)(2)		<u>/</u> (1	) 
		iii.	A map or diagram of each cell or disposal area showing the location and quantity of each hazardous waste? (This information should be cross referenced to specific manifest number, if accompanied by a manifest.)	_ \	/A	
		iv.	40 CFR 265.73(b)(2) Records and results of all waste analyses, trial tests, monitoring data, and operating inspections? 40 CFR 265.73(b)(3)(5)(6)	$\frac{}{}$		
		v.	Reports detailing all incidents that required implementation of the Contingency Plan? 40 CFR 265.73(b)(4)	- J	M	
		vi.	All closure and post closure costs as applicable? 40 CFR 265.73(b)(7)	<u> </u>		
) h	Jasto	<u> </u>	frei stock are measured monthly	, 91	id	Can
h	و در د	5+1 m	ated in between for on-site produ	icea	1 w	25tes
.01	<del>(</del>	site	ated in between for on-site productions also inventoried month	14.	C	an be
e	in te	ent e	d by experience during visual &	insp	،عد	tion.

YES	NO	NI
100	<u> </u>	44.7

4)	Unmanifes	sted 1	Waste	Reports	:
	(applies	only	to O	ff-site	facilities)

a. Has the facility accepted any hazardous waste from an off-site generator subject to 40 CFR 262.20 without a manifest or shipping paper? 40 CFR 265.76

Pont know

- b. If "a" is yes, provide the identity of the source of the waste and a description of the quantity, type and date received for each unmanifested hazardous waste shipment.
- c. Has the facility submitte 8700-13B (unmanifested waste report)?

#### 6) Closure/Post-Closure:

- a. Is the closure plan available for inspection? 40 CFR 265.112(a)
- b. Is the post-closure plan available for inspection? (for disposal facilities only) 40 CFR 265.118(a)

c. Have copies of the closure/post-closure plans been submitted as a part of State Part A permit application? N/A

#### PHYSICAL FACILITY INSPECTION

1)	Security	- Do	security measures	include:
		(If	applicable)	

#### See 40 CFR 265.14 for the following

			YES NO	NI .
	a.	24- hour surveillance?		
		or	/_	
	ъ.	i. Artificial or natural		
		barrier around facility?	<u> </u>	
		ii. Controlled entry?	$\leq$	
	c.	Danger sign(s) at entrance?	$\preceq$ _	
		·	<del></del>	
			· · · · · · · · · · · · · · · · · · ·	
				· .
		Preparedness and Prevention:	·	• • •
		Part 265 Suppart C		
1)	Mair	ntenace and Operation of Facility		
	٤.	Is there any evidence of fire, explosion, or release of hazardous waste or hazardous waste constituent?  40 CFR 265.31		
2)		required, does the facility have following equipment:		
			é	
	8.	Internal communications or alarm systems?  40 CFR 265.34(a) & 40 CFR 265.32(a)	<del>-</del> -	. <del></del>
•			J <del>(Ŝ</del> )	
	D.	Telephone or 2-way radios at the scene of operations?  40 CFR 265.32(b) & 40 CFR 265.34(b)	<u> </u>	
	c.	Portable fire extinguishers, fire control, spill		
	•	control equipment and decontamination equipment?	<b>√</b> ⊕ .	
	•	40 CFR 265.32(c)		
	Indi	cate the volume of water and/or foam available for fire	control:	•
0	د و ے	pictures for numerous avers of	005	ble
Â	1-1-1	ice discharge	1	
	COV	J J J		
(2)	P.A.	System.		
(3)	Te	lephones at strategic 13 (ocations.	. ,	
71	ΛΛ	The the second the second	ZITION	

	8.	Has the owner or operator established testing and maintenace procedures for		
		emergency equipment? 40 CFR 265.33	<del>~</del> — -	
	ъ.	Is emergency equipment	/	
		maintained in operable	/	
		condition?	<del>-</del>	
		40 CFR 265.33		
4)	Has	owner or operator provided	./	
		ediate access to internal alarms?	'.Ja	
	(If	needed)		
		40 CFR 265.34(a)		
	5)	Does the owner or operator maintain adequate aisle		
		space for movement of personnel, fire protection	1	
		equipment, spill control equipment, and decontamin-	1	
	-	ation equpment? (This applies to access for this		
-		equipment to reach hazardous waste management areas)		_

## Use and Management of Containers

# 40 CFR 265 Subpart I

			YES NO	<u>NI</u>
1)	Are containers in good condition? 40 CFR 265.170		None se	ein except Scrap
2)	Are containers compatible with waste in 40 CFR 265.172	them?		
3)	Are containers managed to prevent leaks? 40 CFR 265.173(b)			
4)	Are containers stored closed? 40 CFR 265.173(d)		· ·	
5)	Are ignitable and reactive wastes stored meters (50 feet) from the property line? waste is ignitable or reactive).  40 CFR 265.176			
6)	Are incompatable wastes stored in separation (If not the provisions of 265.17(b) apply 40 CFR 265.177(a)		· · · · · · · · · · · · · · · · · · ·	
<b>7)</b>	Are containers of incompatible waste separatected from each other by physical bar sufficient distance?  40 CFR 265.177(c)			
8)	If required, are the following special reignitable, reactive, or incompatible wast 40 CFR 265.17(a)			
	a. Special handling?	-	<del></del>	·
	b. No Smoking signs?			<del></del>
	c. Separation and protection from ignition sources?	***		
9)	Is there adequate aisle space for unobstr 40 CFR 265.35	ructed movement?	<del></del> —	
S	ome redainable lead is reco	eived in dru	ms whi	ch
	open if sold but closed			<i>I</i> =
<u> </u>	set or Aucti - lead plates	etc. wan	ne rece	rived
Ú	sually dumped into pile hereafter. Drums 15 u	es on arr	ival c	or sometin
+	hereafter. Livums 15 U	sea as si	ag cou	LOVITIONER

# Tanks

# 40 CFR 265 Subpart J

		IES HO HI
1)	Are tanks used to store only those	
1,	wastes which will not cause corrosion,	
	leakage or premature failure of the	
	tank?	<del></del>
	40 CFR 265.192(b)	
2)		
2)	60 cm (2 feet) of free-board, or	
	dikes or other containment structures?	•
	40 CFR 265.192(c)	<u> </u>
3)		
3)	The state of the s	
	waste-feed cut-off?	
	40 CFR 265.192(d)	. — — —
4)		
	tanks protected or rendered nonreactive	•
	or non-ignitable?	
	Indicate if waste is ignitable or	
	reactive. (If waste is rendered	
	non-reactive or non-ignitable, see	
	treatment requirements.)	
	40 CFR 265.198	
5)	Has the owner or operator observed the National Fi	
-	Associations buffer zone requirements for tanks co	ntaining ignitable or
	reactive wastes?	•
	40 CFR 265.198(b)	
	Tank capacity:gallons	<u> </u>
	Tank diameter:feet	
	Distance of tank from property line	feet
		-
	(See table 2-1 through 2-6 of NFPA's "Flammable an	d Combustable Liquids
	Code -1977" to determine compliance.)	
6)	If required, are the following special requirement	s for
	ignitable, reactive, or incompatible wastes addres	sed?
	40 CFR 265.17(a)	
	a. Special handling?	
	• •	
	b. No Smoking signs?	· · · · · · · · · · · · · · · · · · ·
	c. Separation and protection from	
	ignition sources?	
	-0444444 3441624	
	1, N. O + Cooles	•
	11.10 F 11.10 F 2	
		<u> </u>
		_

# Surface Impoundments

# 40 CFR 265, Subpart K

	TES NO NI
Do surface impoundments have at least 60 cm (2 feet) or freeboard? 40 CFR 265.222	
Do earthen dikes have protective covers?	
40 CFR 265.223	<del></del>
Are reactive & ignitable wastes rendered non-reactive or non-ignitable before storage in a surface impoundment? (If waste is rendered non-reactive or non-ignitable, see treatment requirements.)  40 CFR 265.229	
Are incompatable wastes stored in difference impoundments? (If not, the provisions of 40 CFR 265.17(b) apply.) 40 CFR 265.230	
If required, are the following special requirements for ignitable, reactive, or incompatible wastes addressed?  40 CFR 265.17(a)	
a. Special handling?	
b. No Smoking signs?	
c. Separation and protection from ignition sources?	
	60 cm (2 feet) or freeboard?  40 CFR 265.222  Do earthen dikes have protective covers?  40 CFR 265.223  Are reactive & ignitable wastes rendered non-reactive or non-ignitable before storage in a surface impoundment? (If waste is rendered non-reactive or non-ignitable, see treatment requirements.)  40 CFR 265.229  Are incompatable wastes stored in difference impoundments? (If not, the provisions of 40 CFR 265.17(b) apply.)  40 CFR 265.230  If required, are the following special requirements for ignitable, reactive, or incompatible wastes addressed?  40 CFR 265.17(a)  a. Special handling?  b. No Smoking signs?  c. Separation and protection from

#### GROUNDWATER MONITORING

## 40 CFR Subpart F

Complete this section for facilities that treat, store, or dispose of hazardous waste in landfills, surface impoundments and/or by land treatment.

		<u>YES</u>	NO	N	<u>r</u>
1)	Has the owner or operator of the facility implemented a groundwater monitoring system?  40 CFR 265.90(a)				· · · · · · · · · · · · · · · · · · ·
2)	Has the owner or operator of the facility implemented an alternate groundwater monitoring system as described in 265.90(d)?			- 	· .
			1.7	-	-
					. :

#### APPENDIX GN

Complete this section if the owner or operator of a TSD facility also generates hazardous waste that is subsequently shipped off-site for treatment, storage, or disposal.

Man	ifes	t Requirements:		YES	<u>NO</u>	NT.
1)	for	s the operator have copies of the manifest availabl review? CFR 262.40	e	_		
2)		mine manifests for shipments in past 6 months. Ind roximate number of manifested shipments during that				·
3)	info info crit	the manifest forms examined contain the following ormation: (If possible, make copies of, or record omation from, manifest(s) that do not contain the tical elements).  CFR 262.21				-
	8.	Manifest document number?	·			
<b>-</b>		(A sequential number for all manifests before September 20, 1984 and a five digit unique number after September 20, 1984.)	- 1	. ••	·	<del>.</del> .
	b.	Name, mailing address, telephone number, and EPA : number of generator?	ID		- · · · · · · · · · · · · · · · · · · ·	
٠	c.	Name and EPA ID Number of Transporter(s)?				
-	đ.	Name, Address, and EPA ID Number of designated permitted facility?	  		· .	
	е.	The description of the waste(s)(DOT shipping name, DOT hazard class, DOT identification number)?	•	· ·		
	f.	The total quantity of waste(s) and the type and number of containers loaded?			· _	
	8.	Required certification?			<del></del> .	
•	ħ.	Required signatures?			· ——	
-		N/A				
			•		•	

	•	For 35 d	manifest ays), en received	s examined ter the nu	umber of r	(except for manifests in the design	for which	the gen	erator 1	has
hazardous waste?  AO CFR 262.33  INTERNATIONAL SHIPMENTS:  1) Has the installation imported or exported hazardous waste?  AO CFR 262.50 (If answered Yes, complete the following as applicable.)  a. Exzporting hazardous waste; has a generator:  i. Notified the administrator in writing?  ii. Obtained the signature of the foreign consignee confirming delivery of the waste(s) in the foreign country?  iii. Met the Manifest requirements?  b. Importing hazardous waste; has the generator met the	<b>b.</b>	gene	rator ha	s submitte	ed excepti	on reports	ne number : (40 CFR	for whi 262.42)	ch the	
1) Has the installation imported or exported hazardous waste?  40 CFR 262.50 (If answered Yes, complete the following as applicable.)  a. Exzporting hazardous waste; has a generator:  i. Notified the administrator in writing?  ii. Obtained the signature of the foreign consignee confirming delivery of the waste(s) in the foreign country?  iii. Met the Manifest requirements?  b. Importing hazardous waste; has the generator met the	haz	ardous	waste?	placards a	evailable	to transpo	orters of			
40 CFR 262.50 (If answered Yes, complete the following as applicable.)  a. Exzporting hazardous waste; has a generator:  i. Notified the administrator in writing?  ii. Obtained the signature of the foreign consignee confirming delivery of the waste(s) in the foreign country?  iii. Met the Manifest requirements?  b. Importing hazardous waste; has the generator met the							- 1	: -		
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<ul> <li>i. Notified the administrator in writing?</li> <li>ii. Obtained the signature of the foreign consignee confirming delivery of the waste(s) in the foreign country?</li> <li>iii. Met the Manifest requirements?</li> <li>b. Importing hazardous waste; has the generator met the</li> </ul>	40 ( (If	CFR 262 Enswer	ed Yes,	complete	the follo	wing as ap	plicable.	·		
confirming delivery of the waste(s) in the foreign country?  iii. Met the Manifest requirements?  b. Importing hazardous waste; has the generator met the					••			·		
b. Importing hazardous waste; has the generator met the			confirmi	ng delive				ee 		· · · · · · · · · · · · · · · · · · ·
		iii.	Met the	Manifest :	requireme	nts?				
	<b>b.</b>				ste; has	the genera	tor met t	he		- -
<u>용하다는 맛도 이 함께도 하는 목반으로 하면 모두하는 것이 없다면 함께 하고 되는</u>	<u> </u>	-		_			7	- 1		
										- - (,

#### PRE-TRANSPORT REQUIREMENTS:

	•	<u>YES</u>	<u>No</u>	<u>NI</u>
1)	Is waste packaged in accordance with DOT regulations? (required prior to movement of hazardous waste off-site) 40 CFR 262.30			
2)	Are waste packages marked and labeled in accordance with DOT regulations concerning hazardous waste materials? (Required for movement of hazardous waste off-site) 40 CFR 262.31-261.32	- 	· .	
			· . · · ·	
•				
	check this blank and skip to RECORDKEEPING AND REPORTING callation elects option B, complete the following observation a. Is the container clearly marked with the start of accumulation date?			
	40 CFR 262.34			
	<ul> <li>Are <u>all</u> containers visible for inspection?</li> <li>40 CFR 262.34(a)(2)</li> </ul>	-		. <del></del>
	c. Have more than 90 days elapsed since the date inspected in (a)? 40 CFR 262.34			
	d. Do wastes remain in accumulation tanks for more than 90 days? 40 CFR 262.34			
	e.— Is each container and tank labeled or marked clearly with the words "Hazardous Waste"?  40 CFR 262.34			
	N/A			
rii il Hilling Limit				
- 195 - 195 - 195				

#### RECORDKEEPING AND REPORTING:

1) Has the generator made a hazardous waste determination for all solid wastes generated at the facility?

40 CFR 262.11

2) Have all all test results and analyses needed for hazardous waste determination been done? Are they retained on-site for at least three years?

40 CFR 262.11 and 40 CFR 262.40

3) Has the generator submitted annual reports and exception reports as required?

320 IAC 4-4-1

4) Are all test results and analyses needed for hazardous waste determinations retained for at least three years?

40 CFR 262.40

#### APPENDIX TR

SCOPE:		YES	NO	MI
	omplete this Appendix if the owner or operator transports azardous waste subject to 40 CFR 263.10			
	es the transporter transport hazardous waste into the S. from abroad?		. ·	
	es the transporter transport hazardous waste out from e U.S.?		_	
. DO	es the transporter mix hazardous waste of different T shipping descriptions by placing them into a single ntainer?			
MANIFE	ST SYSTEM AND RECORDKEEPING:		- 	
re	e copies of completed manifests available for review and tained for three years?  CFR 263.22			
2) Es	timate the number of manifests for shipments completed ring the past 6 months.			
	amine a representative number of manifests. Indicate umber examined.	-		- <u>-                                  </u>
ex 40 5) Do	d the transporter properly sign and date the manifests amined?  CFR 263.20  any manifests indicate shipments delivered to other an the designated facility?			
6) Do	f (5) is "NO", skip 6 and 7.)  any manifests indicate shipments delivered to other			
th	an an alternate facility?			
ber fac	cause emergency prevents delivery to the designated cility?  CFR 263.21			

DRAW A SITE MAP; identify site of all hazardous waste activity, i.e. accumulation areas, storage areas, treatment areas, etc.

See Part A

Remember to take photos and document as well as possible all violations!!!

FENCE LINE SCRUB BATTERY STORAGE AREA TREES PLANT NORTH WOODED AREA PAVED STORAGE AREA oЩ 0 AREA MATERIAL STORAGE BUILDING · CASTING AND FURNACE BUILDING LOCKED O OXYGEN **GATE** OFFICE PARKING TRUCK  $\Lambda$ RE $\Lambda$ OFFICE TURNAROUND LOCKED PUMP CATE HOUSE MAIN GATE **GUARD** POND HOUSE TILLIA PARKING AREA MELINITON AVE. NORTH D HETALS ORATION 3700 S. ARLINGTON AVE. BEECH GROVE, IN 46107 SCALE I" - 100'

INDIANAPOLIS 46206-1964

ENVIRONMENTAL MANAGEMENT BOARD

1330 West Michigan Street P. O. Box 1964

#### VIA CERTIFIED MAIL

STATE OF INDIANA

SS:

BEFORE THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF INDIANA

COUNTY OF MARION

IN THE MATTER OF THE ENVIRONMENTAL MANAGEMENT BOARD OF THE STATE OF

INDIANA,

Complainant

VS.

REFINED METALS CORPORATION

Respondent



# COMPLAINT, NOTICE OF OPPORTUNITY FOR HEARING, AND PROPOSED FINAL ORDER

TO: Mr. Richard L. Swain, President Refined Metals Corporation 257 West Mallory Memphis, TN 38109

C. T. Corporation Resident Agent for Refined Metals Corporation One North Capitol Indianapolis, IN 46204

This is a Complaint, Notice of Opportunity for Hearing, and Proposed Final Order under IC 13-7-11 of the Indiana Environmental Management Act and IC 4-22-1, the Indiana Administrative Adjudication Act. The Complainant is the Technical Secretary of the Indiana Environmental Management Board (Board). The Respondent is Refined Metals Corporation, a company authorized to do business in Indiana, which operates a place of business at Indianapolis, Indiana. Respondent's U.S. Environmental Protection Agency (EPA) I.D. number is IND 000718130.

Pursuant to IC 13-7-11 and based on an investigation of the facility conducted on June 18, 1985, by Mr. David Koepper of the Division of Land Pollution Control (Division), Indiana State Board of Health, it has been determined that the Respondent is in violation of the Indiana Hazardous Waste Management Program, IC 13-7-8.5, and 320 IAC 4.

#### Findings

This determination is based on the following Findings:

- That on August 18, 1980, Refined Metals Corporation submitted notification of hazardous waste activity as a generator only.
- 2. That on November 19, 1980, Refined Metals Corporation submitted a Part A application to EPA. This application did not include the process codes and design capacities.
- 3. That on December 18, 1981, an inspection was conducted at Refined Metals Corporation to determine compliance with the applicable generator requirements.
- 4. That on January 22, 1982, a referral from the Generator and Transporter Section (Division) was sent to the Treatment, Storage, and Disposal Section requesting that a treatment, storage, and disposal (TSD) inspection be conducted.
- 5. That on February 26, 1982, a TSD facility inspection was conducted to determine compliance with the applicable facility requirements.
- 6. That on April 13, 1983, a Notice of Violation was sent to Refined Metals Corporation. This notice cited violations discovered during the February 26, 1982, inspection.
- 7. That on March 30, 1984, EPA received a request from Refined Metals Corporation to withdraw their Part A application, so as to function solely as a generator of hazardous waste.
- 8. That on April 24, 1984, EPA responded to Refined Metals Corporation's request. The response stated that Refined Metals Corporation was required to close pursuant to 320 IAC 4-7 in order to become a generator only. Additionally, they were instructed that they would have to comply with 320 IAC 4 if they did not pursue closure.
- 9. That on July 13, 1984, a pre-closure inspection was conducted at Refined Metals Corporation. Subsequent to this inspection, a memo was sent to the Compliance Monitoring Section recommending that a compliance inspection be conducted.
- 10. That on May 15, 1985, a complaint was received from Emergency Response, Division of Water Pollution Control of the Indiana State Board of Health. Information received in this complaint indicated that in response to a spill, Emergency Response had detected possible soil contamination of hazardous waste.

- 11. That an inspection conducted at Refined Metals Corporation on June 18, 1985, revealed the following violations:
  - a. Pursuant to 320 IAC 4-6 (40 CFR 265.31), the owner or operator shall manage hazardous wastes to prevent fire, explosion, or release of hazardous waste or hazardous waste constituents on premises which could threaten human health or the environment. Based on information gathered by the Division, there has been a release of hazardous waste or hazardous waste constituents throughout the premises which could threaten human health or the environment. Spillage has occurred in the baghouse area.
  - b. Pursuant to IC 13-7-4-1(c), no person shall deposit any contaminants upon the land in such place and manner which creates, or which would create, a pollution hazard. Scrap lead-bearing wastes and materials have been stored so as to allow contaminants to be deposited on the land in a manner which creates a pollution hazard. This scrap has been stored in waste piles without run-on, runoff, or wind dispersal control. Additionally, wastewater which is used for dust control has been allowed to overflow from the drainage system to a ditch that flows off-site.
  - c. Pursuant to 320 IAC 4-2-1, the owner or operator of a hazardous waste storage, treatment, disposal, or recovery facility shall notify the Board of such activities. Based on information gathered by the Division, Respondent has not notified the Board of hazardous waste storage in containers and storage in waste piles.
  - d. Pursuant to 320 IAC 4-4 (40 CFR 262.11), a generator is required to determine if his waste is hazardous. Based on information gathered by the Division, Respondent has not determined if the waste slag produced in the secondary lead blast furnace and the wastewater that runs through the furnace building are hazardous wastes.
  - e. Pursuant to 320 IAC 4-6 (40 CFR 265.13(b)), the owner or operator shall have a detailed waste analysis plan on file at the facility. Based on information gathered by the Division, Respondent does not have a detailed waste analysis plan on file at the facility.
  - f. Pursuant to 320 IAC 4-6 (40 CFR 265.15(b)), the owner or operator shall develop and follow a written schedule for inspection of security devices. Based on information gathered by the Division, Respondent has not developed and has not followed a written schedule for inspection of security devices.

- g. Pursuant to 320 IAC 4-6 (40 CFR 265.15(b)(4)), the owner or operator shall inspect areas subject to spills daily when in use. Based on information gathered by the Division, Respondent has not inspected areas subject to spills daily when in use.
- h. Pursuant to 320 IAC 4-6 (40 CFR 265.15(b)(4)), the frequency of inspection shall be based on the rate of possible deterioration of equipment. Based on information gathered by the Division, Respondent has not based the frequency of inspection on the rate of possible deterioration of equipment.
- i. Pursuant to 320 IAC 4-6 (40 CFR 265.15(b)), the owner or operator shall develop and follow a written schedule for inspections. Based on information gathered by the Division, Respondent has not followed the written schedule for inspections.
- j. Pursuant to 320 IAC 4-6 (40 CFR 265.15(d)), the inspection log shall contain the date and time of inspection. Based on information gathered by the Division, Respondent has not documented the time of inspections in the inspection log.
- k. Pursuant to 320 IAC 4-6 (40 CFR 265.15(d)), the inspection log shall contain the date and nature of any repairs or remedial actions. Based on information gathered by the Division, Respondent has not documented the time and nature of any repairs or remedial actions in the inspection log.
- 1. Pursuant to 320 IAC 4-6 (40 CFR 265.16(d)(1)), the owner or operator shall maintain job titles and the names of the employees filling the positions in the personnel training records. Based on information gathered by the Division, Respondent has not maintained the name of the employee filling the position in the personnel training records.
- m. Pursuant to 320 IAC 4-6 (40 CFR 265.16(c)), facility personnel shall participate in an annual review of initial training. Based on information gathered by the Division, Respondent has not given an annual review of initial training to facility personnel.

- n. Pursuant to 320 IAC 4-6 (40 CFR 265.52(c)), the contingency plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams. Based on information gathered by the Division, Respondent has not described arrangements agreed to by local police departments, hospitals, contractors, and State and local emergency response teams in the contingency plan.
- o. Pursuant to 320 IAC 4-6 (40 CFR 265.52(e)), the contingency plan shall include a list of all emergency equipment at the facility, location of equipment, physical description of each item on the list, and a brief outline of its capabilities. Based on information gathered by the Division, Respondent has not included the location of equipment, physical description of each item on the list, and a brief outline of its capabilities in the contingency plan.
- p. Pursuant to 320 IAC 4-6 (40 CFR 265.52(f)), the contingency plan shall include an evacuation plan for facility personnel. Based on information gathered by the Division, Respondent has not included an evacuation plan for facility personnel in the contingency plan.
- q. Pursuant to 320 IAC 4-6 (40 CFR 265.55), the emergency coordinator listed in the contingency plan must have the authority to commit the resources needed to carry out the contingency plan. Based on information gathered by the Division, Respondent has listed as an emergency coordinator a person who does not have the authority to carry out the contingency plan. The alternate coordinator listed has left employment with the Respondent.
- r. Pursuant to 320 IAC 4-6 (40 CFR 265.53), the copies of the contingency plan shall be on file at the site, State, and local emergency organizations. Based on information gathered by the Division, Respondent has not maintained copies of the contingency plan on file at local emergency organizations.
- s. Pursuant to 320 IAC 4-6 (40 CFR 265.73(b)(1)), the operating record shall contain a description and the quantity of each hazardous waste received and the method(s) and date(s) of each waste's treatment, storage, or disposal. Based on information gathered by the Division, Respondent has not provided a description and the quantity of each hazardous waste received and the methods and dates of each waste's treatment, storage, or disposal in the operating record.

t. Pursuant to 320 IAC 4-6 (40 CFR 265.73(b)(2)), the location and quantity of each hazardous waste within the facility shall be maintained in the operating record. Based on information gathered by the Division, Respondent has not maintained the location and quantity of each hazardous waste within the facility in the operating record.

### Proposed Final Order

The Complainant hereby proposes the following as the Final Order to be adopted by the Board:

- 1. Within thirty (30) days of receipt of notice from the Division, Respondent shall submit to the Division a closure plan as outlined in 320 IAC 4.1-21-1 through 4.1-21-6 and 4.1-26-7 (and a post-closure plan, if applicable, per 320 IAC 4.1-21-7 through 4.1-21-10 and 4.1-26-7).
  - a. The notice from the Division shall designate the areas which must be addressed in the closure plan (and post-closure plan, if applicable). This plan must address all areas of the facility where any contaminants have been spilled, deposited, buried, or otherwise disposed of on the property, including but not limited to:
    - (i) The alleyway between the furnace building and the storage building;
    - (ii) the area on the north, west, and south sides of the wastewater treatment building:
    - (iii) the area from the wastewater treatment plant to the northeast corner of the property along the entire northern perimeter (this includes the area where the batteries are stored and where the off-site drainage is, but does not include the paved areas);
      - (iv) the area on the south and west sides of the baghouse;
      - (v) the entire north and west sides of the facility where there is no pavement;
    - (vi) all operating areas where spillage has occurred or where waste was stored in the past;
    - (vii) the ditch which flows north from the north fence along the railroad tracks.

- b. The closure plan (and post-closure, if applicable) must include the means to control, minimize, or eliminate, to the extent necessary to protect human health and the environment, present contamination and future escape of contamination.
- 2. Within ten (10) days of notice of approval of the closure plan (and post-closure plan, if applicable) by the Division, Respondent shall implement the plan as approved.
- 3. Within thirty (30) days of receipt of notice of the Board's Final Order, Respondent shall manage all waste piles as required by 320 IAC 4.1-15-1 through 4.1-26-7.
- 4. Within thirty (30) days of receipt of notice of the Board's Final Order, Respondent shall determine if the slag and the furnace building water are hazardous as defined by 320 IAC 4.1-5-1 through 320 IAC 4.1-6-4 (formerly Subparts C and D of 40 CFR 261 and 320 IAC 4-3-1). (If you believe the waste is not hazardous, include evidence to support your decision.)
- 5. Within forty-five (45) days of receipt of notice of the Board's Final Order, Respondent shall submit the results of the determinations on the slag and the furnace building wastes.
- 6. Within thirty (30) days receipt of notice of the Board's Final Order, Respondent shall develop and follow a written waste analysis plan which describes the procedures which he will carry out to comply with 320 IAC 4.1-16-4 and, at a minimum, the plan must specify:
  - a. The parameters for which each hazardous waste will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with paragraph (a) of this Section).
  - b. The test methods which will be used to test for these parameters.
  - c. The sampling method which will be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using either:
    - (i) One of the sampling methods described in 320 IAC 4.1-6-5; or
    - (ii) an equivalent sampling method.

- d. The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up-to-date.
- e. For off-site facilities, the waste analyses that hazardous waste generators have agreed to supply.
- f. Where applicable, the methods which will be used to meet the additional waste analysis requirements for specific waste management methods as specified in 320 IAC 4.1-24-3, 320 IAC 4.1-25-4, 320 IAC 4.1-26-3, 320 IAC 4.1-27-3, 320 IAC 4.1-29-2, 320 IAC 4.1-30-3, and 320 IAC 4.1-31-3.
- g. For off-site facilities, the waste analysis plan required in paragraph (b) of this Section must also specify the procedures which will be used to inspect and, if necessary, analyze each movement of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan must describe:
  - (i) The procedures which will be used to determine the identity of each movement of waste managed at the facility; and
  - (ii) the sampling method which will be used to obtain a representative sample of the waste to be identified, if the identification method includes sampling.
- 7. Within forty-five (45) days of receipt of notice of the Board's Final Order, Respondent shall submit a copy of the waste analysis plan to the Division.
- 8. Within thirty (30) days of receipt of notice of the Board's Final Order, Respondent shall develop and follow an inspection schedule that complies with 320 IAC 4.1-16-6. The schedule must:
  - a. Address security devices.
  - Address areas subject to spills daily when in use.
  - c. Address the waste piles.
  - d. Base the frequency of inspection on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if the deterioration or malfunction or any operator error goes undetected between inspections.

- 9. Within thirty (30) days of receipt of notice of the Board's Final Order, Respondent shall amend the inspection log to include:
  - a. The time of the inspection.
  - b. The date and nature of any repairs or remedial actions.
- 10. Within forty-five (45) days of receipt of notice of the Board's Final Order, Respondent shall submit to the Division a copy of the inspection schedule and the inspection log.
- 11. Within thirty (30) days of receipt of notice of the Board's Final Order, Respondent shall amend the personnel training records to include the names of the employees filling each position.
- 12. Within thirty (30) days of receipt of notice of the Board's Final Order, Respondent shall conduct an annual review of the initial training for all facility personnel involved in hazardous waste management.
- 13. Within forty-five (45) days of receipt of notice of the Board's Final Order, Respondent shall submit to the Division the amended personnel training records which includes the annual review of training.
- 14. Within thirty (30) days of receipt of notice of the Board's Final Order, Respondent shall amend their contingency plan to include the following items:
  - a. A description of the arrangements agreed to police departments, hospitals, contractors, and State and local emergency response teams.
  - b. The name, addresses, and phone numbers (office and home) of all persons qualified to act as alternate emergency coordinator.
  - c. The location and brief outline of capabilities for the list of emergency equipment.
  - d. An evacuation plan for facility personnel.
- 15. Within forty-five (45) days of receipt of notice of the Board's Final Order, Respondent shall submit a copy of the amended contingency plan to the Division.

- 16. Within ten (10) days of receipt of notice of approval of the contingency plan by the Division, Respondent shall submit copies of the plan to all local police departments, fire departments, hospitals, and State and local emergency response teams.
- 17. Within thirty (30) days of receipt of notice of the Board's Final Order, Respondent shall amend their operating records to include the following items:
  - a. For hazardous waste received at the facility the date(s) of its treatment, storage, or disposal at the facility.
  - b. The location of each hazardous waste within the facility and the quantity at each location.
- 18. Within thirty (30) days of receipt of notice of the Board's Final Order, Respondent shall submit a revised Part A application to the EPA that reflects the storage activities at the facility.
- 19. Within thirty (30) days of receipt of notice of the Board's Final Order, Respondent shall submit a State Part A application to the Division that reflects the storage, treatment, disposal, and recovery activities at the facility.
- 20. Within thirty (30) days of receipt of notice of the Board's Final Order, Respondent shall pay the sum of \$19,750 as a civil penalty to the Indiana Environmental Management Special Fund, 1330 West Michigan Street, Indianapolis, Indiana 46206.

The Complainant recommends that the Respondent begin action immediately to comply with the above Proposed Final Order pending final administrative adjudication of this matter. While such action will not result in mitigation of the civil penalty, as proposed, compliance may prevent the imposition of additional penalties for continued violations.

The Board is authorized to assess civil penalties of up to \$25,000 per day for each violation pursuant to IC 13-7-13-1. Therefore, the civil penalty proposed above, if any, which was based upon the factual circumstances existing prior to issuance of this Complaint, is subject to revision prior to the hearing based upon continued violations.

#### Notice of Opportunity for Hearing

The Respondent is hereby notified, pursuant to IC 4-22-1-23, and IC 13-7-11, that the foregoing Proposed Final Order will be recommended to the Board for adoption as its Final Order at its next regularly scheduled meeting, unless the Respondent files with the Hearing Officer, within twenty (20) working days of receipt of this Complaint, a written

answer to the above Findings and/or objections to the imposition of the Proposed Final Order. The written denial of any material fact contained therein or the raising of any written objection will be considered a request for a hearing.

The Respondent's answer or objections should clearly and directly admit, deny, or explain each of the factual allegations set out in the Findings of which it has knowledge. Failure to respond to any factual allegations will be deemed an admission of the truth of the allegation. Said answer or objection should contain:

- 1. A response to each allegation in the Findings; and
- 2. A definite statement of the facts which constitute the grounds of defense and/or basis for objection.

The Hearing Officer appointed by the Board, with whom the answer or other pleading should be filed and who will hold the hearing, if requested, is:

Mr. James M. Garrettson, Hearing Officer Indiana Environmental Management Board 1330 West Michigan Street Indianapolis, IN 46206 AC 317/633-0707

Copies of all pleadings or other papers filed with the Hearing Officer should be served upon all other parties or their attorney, including the Attorney General of Indiana. The Respondent is entitled to be represented by an attorney, to subpoena witnesses, and present testimony on its behalf at any hearing held as a result of this Complaint. Written appearance of counsel should be promptly filed and may be taken into consideration in the granting of continuances.

#### Informal Settlement Conference

Whether or not Respondent requests a hearing, pursuant to IC 4-22-1-4, Respondent may confer informally with the Division and a representative of the Attorney General's Office concerning the allegations or requested relief set out in this Complaint. Respondent may request an informal settlement conference at any time by contacting Mr. Dennis Zawodni of the Division at AC 317/243-5051. However, any such request will not affect the twenty (20) day time limit for responding to this Complaint.

Dated at Indianapolis, Indiana, this 13th day of December, 1985.

Ralph C. Pickard Technical Secretary

DMZ/tr

cc: Mr. James M. Garrettson, Hearing Officer
Office of the Attorney General
Attn: Ms. Deborah Albright

Ms. Sally Swanson, U.S. EPA, Region V Marion County Health Department

Mr. Thomas Russell Mr. Verl Myers Mr. David Koepper

IND 300 718 130

STATE OF INDIANA COUNTY OF MARION	) ) SS: )	BEFORE BOARD	THE ENV OF THE S	vironmental management state of indiana SECENTED
IN THE MATTER OF TE MANAGEMENT BOARD OF INDIANA,		E OF	) ) )	U.S. EPA, RESION : WASTE MANAGEMENT DIVIDING PAZARDOUS WASTE ENFORCEMENT GRANCH
vs.			Ş	CAUSE NO. N-283
REFINED METALS CORE	PORATION		, ) )	
	Respondent	t.	)	

### ANSWER TO FINDINGS AND OBJECTIONS TO THE IMPOSITION OF THE PROPOSED FINAL ORDER

Comes now Refined Metals Corporation (hereinafter "Refined"), by counsel, and hereby submits its Answer to Findings and Objections to the Final Order proposed to be adopted by the Environmental Management Board of the State of Indiana (hereinafter "Board") as such is contained in the "Complaint, Notice of Opportunity for Hearing, and Proposed Final Order", served upon Refined on December 24, 1985.

In support of its Answer to Findings and Objections to the Proposed Final Order, Refined would respectfully submit the following:

#### GENERAL ANSWER AND OBJECTIONS

- 1. Refined denies that it is in violation of the Indiana Hazardous Waste Management Program, IC 13-7-8.5, and 320 IAC 4 and 320 IAC 4.1.
- 2. Refined is exempt from RCRA regulation and the Indiana Hazardous Waste Management Permit Program and Related Hazardous Waste Management Requirements as such regulation relates to the

inspections conducted by representatives of the Land Pollution Control Division (hereinafter "Division"), and as such inspections are reflected in the subject Complaint, Notice of Opportunity for Hearing and Proposed Final Order.

- 3. Refined denies that it is now or was at any time relevant to these proceedings, a generator of hazardous waste not exempted from RCRA regulation and the Indiana Hazardous Waste Management Program and Related Hazardous Waste Management Requirements.
- 4. Refined denies that it now or at any time relevant to these proceedings has either owned or operated a hazardous waste facility.
- 5. Refined denies that it has deposited any contaminants upon the land in such a place and manner which creates, or which would create a pollution hazard.
- 6. Refined denies that currently or at any time relevant to these proceedings it has inappropriately stored or mishandled any lead bearing materials in such a manner as to cause a pollution hazard.
- 7. Refined states that it is in compliance with all applicable hazardous waste management rules and regulations and is neither currently nor at any relevant time has it engaged in any prohibited acts.
- 8. Refined objects to the Proposed Final Order with respect to the proposed imposition of requirements, rules or regulations which are inapplicable to Refined, and, further specifically objects to the proposed civil penalty in the amount of Nineteen Thousand Seven Hundred Fifty Dollars (\$19,750.00) as being

unreasonable, excessive and as constituting a manifest abuse of discretion.

9. The Final Order as proposed is: based upon incorrect or inaccurate findings and inapplicable standards, rules and/or regulations; contrary to law; unreasonable in terms of its requirements; constitutes a manifest abuse of discretion; invalid in that it inappropriately classifies certain of Refined's products as hazardous wastes; and, predicated upon alleged violations of RCRA and the Indiana Hazardous Waste Management Program and Related Hazardous Waste Management Requirements at times when Refined was not subject to, or, was exempted from such regulation.

#### ANSWER TO FINDINGS

#### FINDING 1:

On or about August 18, 1980, Refined submitted EPA

Form 8700-12(6-80) NOTIFICATION OF HAZARDOUS WASTE ACTIVITY
advising that it was a generator listing KO69 as a specified
hazardous waste. At such point in time, Refined was uncertain as
to which rules and regulations were indeed applicable to its
operations, and, to Refined's knowledge, no one in the secondary
lead smelting industry, similarly situated, was cognizant of
exactly what was required. Refined realized the necessity of
initiating procedures to secure interim status and was equally
aware of the fact that inasmuch as businesses in general were not
necessarily familiar with what was actually required in terms of
compliance, no one would deal with a business which did not
possess an EPA Identification Number.

To the best information of Refined, the continuous processing and reprocessing of KO69 as an integrated part of the smelting process would relieve Refined from regulation under RCRA. Simply put, Refined was informed that if there were a question in terms of whether such document should be filed or not, it was better to file.

#### FINDING 2:

Refined admits that on or about November 19, 1980, it submitted its Part A Application to U.S. EPA. An error was made vis-a-vis inappropriately identifying the facility as one which treats, stores or disposes of hazardous wastes. Such error subsequently was brought to the attention of U.S. EPA by letter from Refined dated March 26, 1984. The submitted Part A Application and in particular at page 4 of 5, sought to explain the operations of Refined which did not conveniently fall into any well defined category. The process codes and design capacities were not inserted as they are applicable only to a TSD facility. Refined contends that it was not then and is not now a TSD facility. In other words, although the Part A Application contained an error which later was sought to be corrected, a review of the Application itself and the information contained therein would show that Refined was not in fact a TSD facility, and should not be regulated as such.

#### FINDING 3:

Refined admits that on or about December 18, 1981, an inspection was conducted at Refined. Refined does not have sufficient information to either admit or deny the remaining

material allegations as contained in this Finding. It is the understanding of Refined that the gentleman who conducted this inspection, Mr. Terry Gray, did confirm that all KO69 was reused on site, and, that lead products were stored on concrete floors in a building.

#### FINDING 4:

Refined is without sufficient information to either admit or deny the material allegations as contained in this Finding. Refined, however, denies that at any relevant time was it a TSD facility.

#### FINDING 5:

Refined admits that on or about February 26, 1982, an inspection was conducted at its facility; but, is without sufficient information to either admit or deny the remaining material allegations as contained in this Finding.

#### FINDING 6:

Although the date of April 13, 1983, is referred to in this Finding, Refined believes that on or about April 13, 1982, a letter from Ralph C. Pickard, Technical Secretary to the Environmental Management Board was sent to Refined alleging violations of RCRA and 320 IAC 4.

#### FINDING 7:

Refined admits that by letter dated March 26, 1984, to

U.S. EPA, a modification was requested of the Part A Application

previously submitted so as to in effect allow Refined, as a true

reflection of its actual operations, to be categorized as a

\*nerator only. Refined further requested permission to retain

its EPA Identification Number. Refined clearly expressed in its written submission that it did not treat, store or dispose of hazardous waste as a function of its operations.

#### FINDING 8:

Refined admits that on or about April 27, 1984, it received from U.S. EPA a letter dated April 24, 1984. Refined is of the opinion that the position of U.S. EPA as reflected in this letter was based upon information from the Division which incorrectly characterized Refined as a TSD. Refined, however, would point out that as early as September 15, 1981, it was advised by U.S. EPA Region 5, that it was not necessary to even submit a Hazardous Waste Permit Application since the KO69 was generated and disposed of as a part of production. It should also be noted that based upon information submitted, it appeared to U.S. EPA in September, 1982, that Refined used, reused, recycled or reclaimed its waste as described in 40 CFR Part 261.6. Refined contends that at all relevant times it qualified as a recycler and that a permit was not required and that the permit application indeed should have been withdrawn. The processing of necessary documentation in terms of appropriate changes in classification was inordinately delayed as a result of . the file of Refined being misplaced at U.S. EPA for a period of time. It should also be noted that in February, 1982, upon being informed that KO69 was being reprocessed, the State of Indiana opined that it no longer was interested in this material, and, the only item the State had an interest in, in terms of regulation, was the maintenance unit which used solvent for cleaning dirty parts.

#### FINDING 9:

 Refined is without sufficient information to either admit or deny the material allegations as contained in this Finding.

#### FINDING 10:

Refined has no knowledge of any complaint from Emergency Response, Division of Water Pollution Control of the Indiana State Board of Health. Refined has been unable to locate any information concerning the alleged "spill". Accordingly, Refined is without sufficient information to either admit or deny the material allegations as contained in this Finding.

#### FINDING 11:

Refined admits that on or about June 18, 1985, an inspection was conducted at the Refined facility in Beech Grove, Indiana.

- (a) Refined denies that there has been a release of hazardous waste or hazardous waste constituents throughout
  the premises which could threaten human health or the
  environment. Without more specific information, Refined
  is unable to admit or deny the allegation that "spillage
  has occurred in the bag house area."
- (b) Refined denies that scrap lead bearing wastes and materials have been stored so as to allow contaminants to be deposited on the land in a manner which creates a pollution hazard. On one occasion non-hazardous materials were stored temporarily on concrete. The pile has since been removed. The topography would allow any

- run-off to be appropriately channeled so as to prevent off-site contamination.
- (c) Refined has provided all appropriate notifications, and denies the existence of waste piles in the context of a TSD facility or otherwise.
- (d) Refined denies that it has failed to determine if the slag is a hazardous waste. Refined is unclear as to what is meant by "waste water that runs through the furnace building". In point of fact, the files of the Indiana State Board of Health will reflect the analysis of the slag and permission to dispose of the slag at the Kentucky Avenue landfill.
- (e) Refined denies that it does not have a detailed waste analysis plan on file at the facility, although as a generator it is not obligated to do so.
- (f) As a generator, Refined denies that it is obligated to develop or follow a written schedule for inspection of security devices. However, Refined employs a security service twenty-four hours a day which inspects security devices daily.
- (g) Refined denies that it has failed to inspect areas subject to spills daily, whether such areas are in use or not.
- (h) Refined denies that it has failed to base the frequency of inspections on the rate of possible deterioration of equipment. Refined states affirmatively that all equipment is inspected on a daily, if not a shift basis.

- (i) Refined denies that as a generator it is obligated to follow a written schedule for inspections. This is not-withstanding the fact that, as stated above, inspections are conducted on a daily, if not a shift basis.
- (j) As a generator, Refined denies that it is obligated to document the time of inspections in an inspection log.
- (k) Refined denies that as a generator it has an obligation to document the time and nature of any repairs or remedial actions in an inspection log. However, there is information retained concerning the nature of repairs and/or remedial actions.
- (1) Refined denies that it has failed to maintain the name of the employee filling the position in the personnel training records, although not required to do so.
- (m) Refined denies that it has failed to provide an annual review of initial training to facility personnel.
- (n) Although not so obligated as a generator, Refined denies that it has not described arrangements agreed to by appropriate emergency response teams in its contingency plan, also not required.
- (o) Refined denies that as a generator, it is obligated to provide the location of equipment, physical description of each item on the list and a brief outline of its capabilities in its contingency plan. Nevertheless, Refined has provided all relevant information concerning emergency equipment at the facility.
- (p) Refined has provided an evacuation plan for facility personnel although as a generator, such is not required.

- (q) Refined, although having no obligation to do so as a generator, denies that it has failed to list as an emergency coordinator a person who has the authority to carry out the contingency plan, which as stated above, is not required. Further, an alternate coordinator has been identified and listed.
- (r) As a generator, Refined is not obligated to maintain copies of the contingency plan on file at local emergency organization(s). Refined would, however, state that agreements are in existence with appropriate local authorities.
- (s) Although not so obligated, Refined possesses a description and quantity of each material received and denies that it receives any hazardous waste. Refined further denies that it treats, stores or disposes of any hazardous waste. The location and quantity of KO69 previously has been made known to the Division.

With respect to all of the documentary or other requirements under RCRA or under IC 13-7-8.5 and 320 IAC 4 and 320 IAD 4.1, which relate to TSD facilities and not generators, Refined is exempt from any such requirements.

# OBJECTIONS TO THE PROPOSED FINAL ORDER Refined Hereby Objects To The Proposed Final Order As Follows:

1. Refined heretofore has submitted to the Division an appropriate and sufficient closure plan which is on file with the Division. Refined denies the requirement of submitting any further documentation with respect to closure or post-closure and

specifically denies that there has been any contamination of soil and any impact on the ground water or adjacent waterways, on site and off site. Refined denies that there has been any contamination creating a pollution hazard and states that there is no present or future risk of contamination and that all reasonable actions and precautions have been taken to protect human health and the environment. There is no evidence of probative value demonstrating any hazard to human health or the environment. Refined further objects to being required to proceed with the implementation of a closure plan or post-closure plan as proposed, as there is no evidence of probative value supporting such requirement(s).

- 2. Refined objects to being required to implement the closure plan as proposed and further objects to the necessity of implementing a post-closure plan.
- 3. Refined alleges that there are no waste piles to be managed.
- 4. Refined heretofore has provided evidence that the slag is not hazardous. Refined is uncertain as to what is meant by "furnace building water" and accordingly is unable to respond to such request.
- 5. See objection to number 4 above. Refined is uncertain as to what is meant by "furnace building wastes".
- 6. Refined objects to this section of the proposed order in that Refined heretofore has developed and followed a written waste analysis plan although not required, and no further information or documentation is required. Further, no hazardous waste

is received from off-site and any suggested requirements with respect to such off-site facilities are inapplicable.

- 7. As stated above, a waste analysis plan previously was submitted which is adequate.
- 8. Refined does follow an inspection protocol which meets all applicable requirements.
- 9. Refined is not required to keep a record of the time of inspections and the nature of repairs or remedial actions.

  However, there is information retained concerning such repairs and remedial actions.
- 10. Refined believes that it heretofore has submitted a copy of the inspection log format although not required to do so.
- 11. Refined heretofore has appropriately amended the personnel training records to include the names of the employees filling each position.
- 12. Refined does conduct an annual review of the initial training for all facility personnel involved in the operation of the facility.
  - 13. Refined believes that it heretofore has provided the Division all necessary information concerning training and the annual review of training.
  - 14. Refined submits that its contingency plan, although not required, is adequate as previously submitted.
    - 15. See response to 14 above.
    - 16. See response to 14 above. See also answer to Finding 11(r).
    - 17. Refined denies that it receives any hazardous waste.

- 18. Refined denies that it conducts any storage activities at the facility which would cause Refined to be considered a TSD facility, necessitating a revised Part A Application being submitted.
  - 19. See response to 18 above.
- 20. Refined objects to and contests the civil penalty in the amount of Nineteen Thousand Seven Hundred Fifty Dollars (\$19,750.00) and alleges that there should be no civil penalty assessed based upon the facts.

Notwithstanding the position of Refined as set forth hereinabove, Refined immediately commenced voluntary actions to eliminate even the possibility of contamination and currently is in the process of implementing additional safety measures to further preclude the possibility of run-off. Refined would further state that historically it has endeavored to cooperate fully with all regulatory agencies with respect to the environmental management of its operations, and is confident that the records of the Indiana State Board of Health will reflect efforts which Refined has made at any time concerns were raised by the Indiana State Board of Health. More important is the fact that, based upon information previously provided by U.S. EPA, Refined was and remains of the opinion that its continuous processing of KO69 onsite exempts Refined from RCRA regulation. However, and as evidence of its abiding good faith, Refined has instructed its engineering consultants to immediately develop a procedure for placing in tanks all KO69 notwithstanding the fact that the current processing configuration of the KO69, in the judgment of Refined, and which received support from U.S. EPA, did not render Refined a TSD facility. Further, and notwithstanding the fact

that the outside temporary storage of lead product was on concrete and which product has been fully removed, Refined no longer will store any product in a manner which causes legitimate concern to the Division in terms of run-on and run-off control.

Contemporaneously herewith, and in recognition of the concern of the Division, Refined is addressing from an engineering perspective methodologies which will totally eliminate even the possibility of off-site contamination. Also, and although every reasonable effort has been made in connection with general "housekeeping", Refined is redoubling its efforts in this regard.

Refined has operated the subject facility for only a period of approximately two years. In that period of time Refined has spent or has committed to expend tens of thousands of dollars voluntarily on environmentally related matters including the installation of a furnace to process the KO69 material. Even if we were to assume that certain RCRA and/or the Indiana Hazardous Waste Management Permit Program and Related Hazardous Waste Management Requirements regulations would be applicable to the operations of Refined, the time constraints imposed in terms of compliance are exceedingly short. Once again, assuming arguendo, that RCRA and/or the Indiana Hazardous Waste Management Permit Program and Related Hazardous Waste Management Requirements requlations would apply, extensions of time to effect compliance are reasonably required under the circumstances. Compliance with even a portion of the requirements will be incredibly expensive and quite time consuming.

Refined wishes to cooperate fully and voluntarily. Refined believes in good faith that RCRA and/or the Indiana Hazardous

Waste Management Permit Program and Related Hazardous Waste Management Requirements do not apply to its operations and that an attempt to obligate Refined to comply with inapplicable laws, rules and regulations is an abuse of discretion and contrary to law. At the same time, Refined has an obligation as a good corporate citizen to respond in an appropriate manner to the concerns of regulatory agencies whose primary function is the protection of the health of the population and the environment. Conversely, the same regulatory agencies have a reciprocal obligation to fairly and equitably treat its corporate citizens and not attempt to arbitrarily impose standards which do not apply. Refined neither receives nor accepts any hazardous waste. No hazardous waste leaves the site and the KO69 is continuously processed. Although KO69 is a specified or a designated hazardous waste, Refined neither stores nor transports such material and therefore is exempt from RCRA regulation and the Indiana Hazardous Waste Management Permit Program and Related Hazardous Waste Management Requirements.

For the foregoing reasons, Refined, as Respondent, respectfully prays the Board to reject the Proposed Final Order, and for all further, just and proper relief.

Respectfully submitted,

HARRISON & MOBERL

Jay M. Brodey, Esq. Judith E. Overturf HARRISON & MOBERLY 777 Chamber of Commerce 320 North Meridian Street Indianapolis, Indiana 46204 (317) 639-4511

Attorneys for Respondent

#### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following by United State Mail, first-class postage prepaid, this 20 day of \_\_\_\_\_\_\_\_, 1986.

Mr. James M. Garrettson
Hearing Officer
Environmental Management Board
1330 West Michigan Street
P.O. Box 1964
Indianapolis, Indiana 46204-1964

Ms. Deborah E. Albright Office of the Attorney General 219 State House Indianapolis, Indiana 46204

Ms. Sally Swanson U.S. EPA, Region V 230 South Dearborn Chicago, ILlinois 60604

Marion Co. Public Health Division Marion Co. Health & Hospital Corp. 222 East Ohio Street Indianapolis, Indiana 46204

Mr. Thomas Russell Board of Health 1330 West Michigan Street P.O. Box 1964 Indianpaolis, Indiana 46206-1964

Mr. Verl Myers
Board of Health
1330 West Michigan Street
P.O. Box 1964
Indianapolis, Indiana 46204-1964

Mr. David Koepper Board of Health 1330 West Michigan Street P.O. Box 1964 Indianapolis, Indiana 46204-1964 Mr. Ralph C. Pickard Technical Secretary Board of Health

1330 West Michigan Street

P.O. Box 1964

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Jay M. Brodey

Judith E. Overturf

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HARRISON & MOBERLY
777 Chamber of Commerce Building
320 North Meridian Street
Indianapolis, Indiana 46204
(317) 639-4511

Attorneys for Respondent

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entering codes. If more lines are needed, enter the codeful in the speep provided. If a process will be used that is not included in the list of codes below, then describe the process including it design capacity in the space provided on the form (Item III-C).  8. PROCESS DESIGN CAPACITY — For sech code entered in column A enter the capacity of the process.  1. AMOUNT — Enter the amount entered in column B (II), enter the code from the list of unit measure codes below that describes the unit of measure has a feel tied below thould be used.  PROC APPROPRIATE UNITS OF CESS MEASURE FOR PROCESS CESS MEASURE CESS CESS MEASURE FOR PROCESS CESS	111.	PI	30	CES	SES - CODES AN	D DESIGN CAL	ACI	TIES		V. 6		di i	7.			100 15 15 15 15 15 15 15 15 15 15 15 15 15		Sec. 16		1		- :		an a y
B. PROCESS DESIGN APACITY — For such code entered in column A enter the capacity of the process.  1. ANOUND MEASURE emonutes amount entered in column B(11), enter the code from the list of unit measure codes below that describes the unit of measure that are listed below thould be used.  PROCESS CODE DESIGN CAPACITY  Treatment:  TANK  TOI CALLONS ON LITERS  SUMPACE IMPOUNDMENT BOY CALLONS ON LITERS  SUMPACE IMPOUNDMENT BOY CALLONS ON LITERS  SUMPACE IMPOUNDMENT BOY CAPACITY BOY CONTROL OF SUMPACE IMPOUNDMENT BOY CAPACITY BOY CA	(	ente	erin	g co	des. If more lines are	needed, enter the	code	's/ in	the s	pace p	provid	ded. I	if a t	proc	ess	will be used th								
2. UNIT OF MEASURE — For each amount entered in column B(1), enter the code from the list of unit measure codes below that describes the unit of measure that are listed below should be used.  PROCESS COST PROCESS COST PROCESS PROCESS PROCESS PROCESS PROCESS PROCESS PROCESS DESIGN CAPACITY  FIGURE 1. Set Construction of the list of unit measure codes below that describes the unit of measure that are listed below should be used.  PROCESS COST PROCESS COST PROCESS PROCESS PROCESS DESIGN CAPACITY  Treatment:  TREATMENT (benef. drum, etc.) 501 CALLONS OR LITERS SET COST PROCESS DESIGN CAPACITY  PILLE SET COST PROCESS COST PROCESS DESIGN CAPACITY  TO CALLONS OR LITERS SUFFACE IMPOUNDMENT SET COST PROCESS COST PROCESS DESIGN CAPACITY  TO CALLONS OR LITERS SUFFACE IMPOUNDMENT SET COST PROCESS COST PROCESS PROCESS DESIGN CAPACITY  TO CALLONS OR LITERS SUFFACE IMPOUNDMENT SET COST PROCESS DESIGN CAPACITY  TO CALLONS OR LITERS SUFFACE IMPOUNDMENT SET COST PROCESS DESIGN CAPACITY  UNIT OF MEASURE COST SET COST PROCESS DESIGN CAPACITY  UNIT OF MEASURE CODE	B. 1	PRI	DÇI	ESS	DESIGN CAPACITY	– For each code e		•	•													. <b>.</b>	· · ·	
PROCESS CODE DESIGN CAPACITY  Treatment:  Total Callons per DAY OR  LYERS PER DAY  MEASURE CODE UNIT OF MEASURE  CODE UNIT O		2.	UN	IT C	F MEASURE - For e	ach amount enter							de f	rom	the	e list of unit m	easure c	odes be	low that c	describ	es the	uni	t of	
Storage:  Storag				P		CESS MEASU	REF	OR P	ROC	ESS					PR	OCESS		CESS	MEAS	URE I	OR	PRO	CESS	
PILE  **SOLUTION OF LITERS **S	St	ora	ge:								-	Trea	tme									.,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,		-
DISPOSAL  INJECTION WELL  DISPOSAL  ENAPPLICATION DISPOSAL  DISPOSAL  ENAPPLICATION DISPOSAL  DISPOSAL  DISPOSAL  ENAPPLICATION DISPOSAL  DISPOSAL	-	N.	i*			502 GALLON	S OR	LITE	ERS					CE	M	POUNDMENT			LITERS GALLO	PER NS PE	DAY R D/			
ACRE-FEET (Illie volume that would cover one exer to a depth of one foot) OR expense or to to a depth of one foot) OR expense or to to a depth of one foot) OR expense or to to a depth of one foot) OR expense or to occurring in tonks, and to the processes in the space provided. Hermital tonks of the space provided intermital tonks.  BURFACE IMPOUNDMENT  UNIT OF MEASURE  UNIT OF	<u>D</u>	spr			MPOUNDMENT				ER\$			INC	INE	RA'	70	R		T03	TONS P METRI GALLO	C TON	S PE	R HO		
LAND APPLICATION DELY ACRES ON HECTARES OF LITERS PER DAY  SURFACE IMPOUNDMENT  UNIT OF MEASURE  UNIT OF MEASURE  CODE  LITERS PER DAY  VACRETERS  CODE  LITERS PER DAY  VACRETERS  CODE  LITERS PER DAY  VACRETERS  CODE  UNIT OF MEASURE  CODE  UNIT OF MEASURE  CODE  LITERS PER DAY  VACRETERS  CODE  LITERS PER DAY  CODE  LITERS PER DAY  CODE  LITERS PER DAY  CODE  LITERS PER DAY  CODE  LI					WELL	DEO ACRE-FE	ET (l	lie vo e acri	lume e to			ther	mai	or b	riol	logical trealme	nt	T04	GALLO	NS PE	RD		R.	
SURFACE IMPOUNDMENT  UNIT OF MEASURE  CODE  UNIT OF MEASURE  ONLY  ACRES, CODE  UNIT OF MEASURE  CODE  UNIT OF MEASURE  ONLY  ACRES, CODE  UNIT OF MEASURE  CODE  UNIT OF MEASURE  CODE  UNIT OF MEASURE  ONLY  ONLY  UNIT OF MEASURE  CODE  UNIT OF MEASURE  ONLY  ONLY  UNIT OF MEASURE  CODE  UNIT OF MEASURE  ONLY  ONLY  UNIT OF MEASURE  ONLY  ONLY  ONLY  UNIT OF MEASURE  ONLY						HECTAR D81 ACRES C D82 GALLON	E-ME R HE S PEI	TER CTA R DA	RES	R		aurf	ace s. I	impe Desci	dib.	ndments or inc e the processes	iner- in							
UNIT OF MEASURE CODE  QALLONS  GALLONS  HECTAREM  HECTAREM  HECTAREM  HECTAREM  HECTAREM  HECTAREM  HECTAREM  HECTAREM  HECTAREM  ACRES  HECTAREM  HEC	St	R	FAC	EI	MPOUNDMENT	DE3 GALLON			ERS							W. T. O. F.								or
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CUBIC METERS GALLONS PER HOUR  EXAMPLE FOR COMPLETING ITEM III (shown in line numbers X-1 and X-2 below): A facility has two storage tanks, one tank can hold 200 gallons and the other can hold 400 gallons. The facility also has an incinerator that can burn up to 20 gallons per hour.    C	G.	AL	RS	N.S.	• • • • • • • • • • • • • • • • • • • •	G	L T	ITER ONS	S PER	R DA	Y				•	V	ACF	E-FEE	r				A	
other can hold 400 gallons. The facility also has an incinerator that can burn up to 20 gallons per hour.    Total   Dulp	CI	361	C P	MET	ERS	c	G	ALL	ONS	PER	HOU	R				, . E								
A. PROCESS DESIGN CAPACITY  A. PROCESS DESIGN CAPACITY  CEBS  CODE (from list above)  1. AMOUNT (specify)  2. UNIT OF MEAN SURE (enler code)  N-1 S 0 2 600  CESS  N-2 T 0 3 20  E 6 6 7	EX.	AM:	PLI an i	FC	PRICOMPLETING ITE 400 gallons. The faci	M III <i>(shown in I</i> lity also has an in	<i>ine nu</i> cinera	mbei tor ti	rs X- hat c	1 and an but	<i>X-2</i> in up	<i>below</i> to 20	):  gal	A fac	ili: pe	ty has two stor r hour,	rage tan	ks, one 1	tenk cen h	nold 20	)O gal	ilons	and t	he
B. PROCESS DESIGN CAPACITY CEBS CODE (from list above)  1. AMOUNT (specify)  2. UNIT OF MEA-SURE (chier code)  VX-1 S 0 2 600  X-2 T 0 3 20  E 6 6 9  2					טטי	1/4 5	7	1	1	1	7	/	7	7	7	111	1	1	11	T	7	abla	$\angle$	$\bigcup$
	æ				B. PROCESS		CIT	<u></u>		F0						B. PRC	CESS	DESIG	N CAPA			T	FO	P
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2	X-2	7	0	3	20	:		1-1	1	11	1	6								$\top$		T	$\prod$	$\top$
2     8       3     9       4     10		)	0	3		rage Area)	1	Ų	1	$\prod$	1	7				<del>'</del>				1	$\prod$	T	$\prod$	1
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included with above

\_'nm page 2. opy this page before completing if you have more than 26 wastes to list. Form Approved OMB No. 158-S80004 FOR OFFICIAL USE ONLY NUMBER (enter from page 1) W DUP V. DESCRIPTION OF HAZARDOUS WASTES (continued) C. UNIT OF MEA-SURE (enter code) D. PROCESSES والمعارضين A. EPA HAZARD. WASTENO B. ESTIMATED ANNUAL QUANTITY OF WASTE 2. PROCESS DESCRIPTION (if a code le not entered in D(1)) LINE NO. 1. PROCESS CODES (enler) (enter code) 87 - 80 27 - 80 87 - 80 87 - 89 1 q q 2190 1 T S 0 3 (Battery Storage Area) 2 00 8 D 3 4 5 6 7 8 \* Quantity shown represents the maximum quantity in storage at any one time 9 11 12 13 14 15 16 17 18 19 20 21 22 24 25

		•	
ontinued from the front.  V. *** IPTION OF HAZARDOUS WASTES (co	outineed! Observe No.	FOR STANDARD PROVIDER	the second second
E. L S SPACE TO LIST ADDITIONAL PRO		ON PAGE 3.	
	•		
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NI A			
NA			
<del>\</del>			
EPA I.D. NO. (enter from page 1)			
IND000718130 6			
V. FACILITY DRAWING		<b>可以的证明和证明</b>	
A registry of accilities must include in the space provided on	page 5 a scale drawing of the facility (s	ee instructions for more detail)	(See attachment 3)
V OGRAPHS All eung facilities must include photographs (aer	rial or ground-level) that clearly de	elineate all existing structur	es existing storage
treatment and disposal areas; and sites of future sto	orage, treatment or disposal areas (s	see instructions for more de	
VII. FACILITY GEOGRAPHIC LOCATION	CA COUNTY CONTRACTOR OF THE PROPERTY OF THE PERSON NAMED IN CONTRACTOR OF	a transfer of the property of the property of the	ECONOMIC PROPERTY.
LATITUDE (degrees, minutes, & second	(s)	LONGITUDE (degrees, minut	es, & seconds)
15 45 57 47 50 - 37		72 - 74 75 76	<u>,, , ,, , , , , , , , , , , , , , , , </u>
VIII. FACILITY OWNER AS 15	usini da kanana kan	是自己的基本的特色	
A. If the facility owner is also the facility operator as skip to Section IX below.	: listed in Section VIII on Form 1, "Gen	eral Information", place an "X"	' in the box to the left and
B. If the facility owner is not the facility operator as	listed in Section VIII on Form 1, comp	lete the following items:	
	ILITY'S LEGAL OWNER		PHONE NO. (area code & no.)
		<del></del>	
<del></del>	ain, President	[9]	V 11 7 / 1/ 15 73 17 17 10
3. STREET OR P.O. BOX	4. CITY OR T	TOWN 8.ST.	6. ZIP CODE
P. O. Box 9006	G Memphis	T N	3 18 11 10 19
IX. OWNER CERTIFICATION			
I certify under penalty of law that I have personally documents, and that based on my inquiry of those is			
submitted information is true, accurate, and comple	ete. I am aware that there are signif		
including the possibility of fine and imprisonment.  A. NAME (print or type)	B. SIGNATURE	16.54	TE SIGNED
Swain T. W. Freudiger	- //	,	1.10-
	Milliand	74 01	103/83
A RATOR CERTIFICATION		THE SERVICE OF THE SE	
I certify under penalty of law that I have personally documents, and that based on my inquiry of those is	individuals immediately responsible	e for obtaining the informat	tion, I believe that the
submitted information is true, accurate, and comple including the possibility of fine and imprisonment	ete. I am aware that there are signif	licant penalties for submitti	ng false information,

B. SIGNATURE

NA

C. DATE SIGNED

A. NAME (print or type)

FATTY DRAWING (see page 4)

(See Attachment 3)

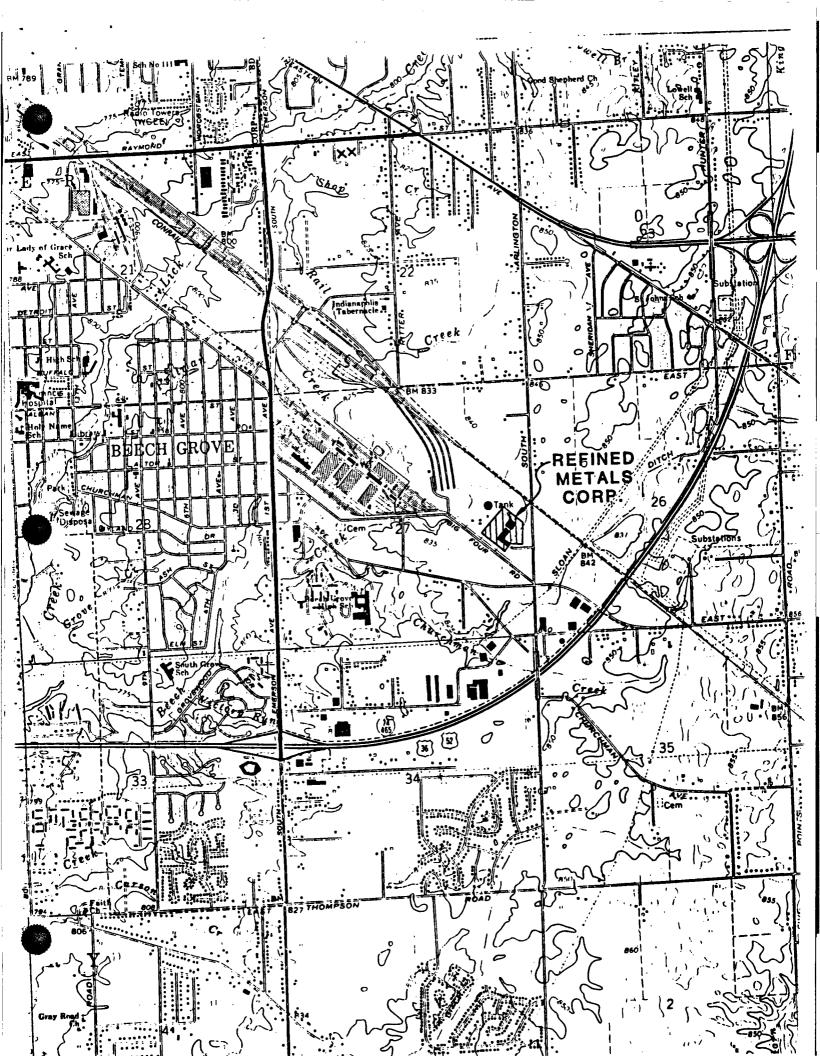
ATTACHMENT 1
STATE AIR QUALITY PERMITS

ATTACHMENT 1
STATE AIR QUALITY PERMITS

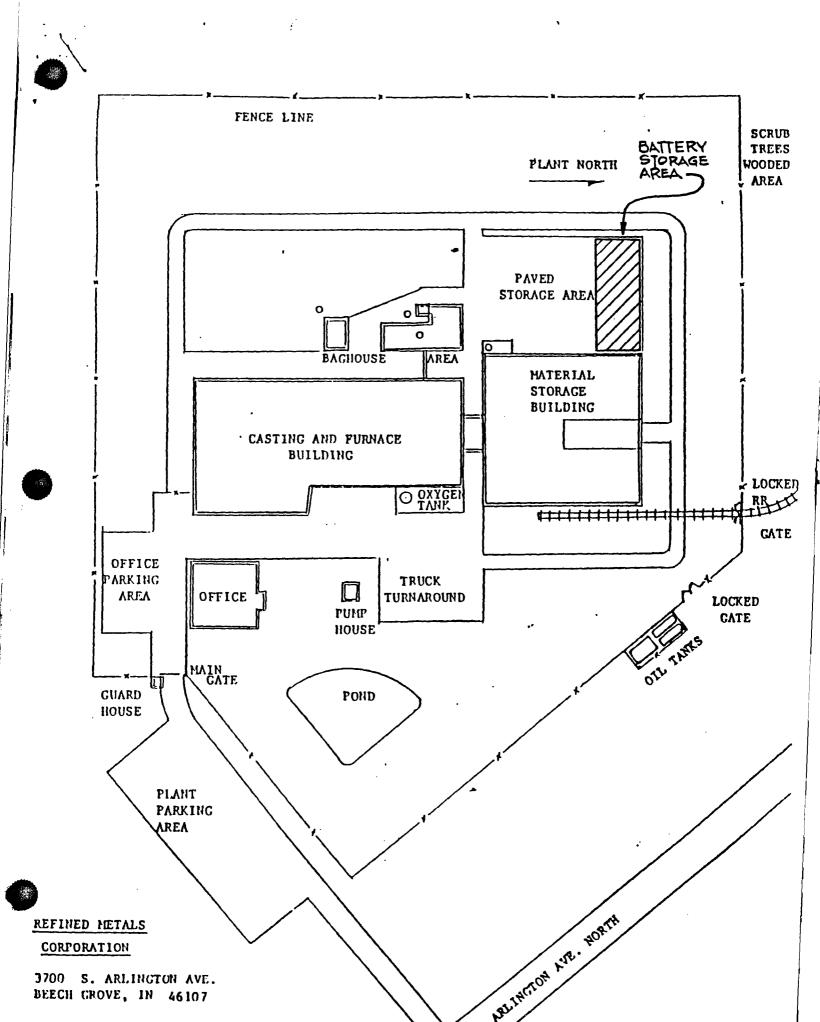
Permit No	Date Issued	Description
08025	12-29-83	Blast Furnace (Cupola) with Baghouse Cyclone and Afterburner
08026	12-29-83	Sanitary Ventilation for Raw Material and Blast Furnace Feed Facilities
08027	12-29-83	Sanitary Ventilation for Blast Furnace Slag Tap, Slag Cooling Area, Lead Well and Launder with Cyclone and Baghouse Dust Collectors
08028	12-29-83	Refinery Kettle No. 1
08029	12-29-83	Refinery Kettle No. 2
08030	12-29-83	Refinery Kettle No. 3
08031	12-29-83	Refinery Kettle No. 4
08032	12-29-83	Refinery Kettle No. 5
08033	12-29-83	Refinery Kettle No. 6
08034	12-29-83	Refinery Kettle No. 7

ATTACHMENT 2
PART A TOPOGRAPHIC MAP

Topo map is on order



## ATTACHMENT 3 FACILITY DRAWING









105 South Meridian Street
P.O. Box 6015
Indianapolis, Indiana 46206-6015
March 26, 1987

VIA CERTIFIED MAIL P 395 652 387

Mr. William Freudiger Refined Metals Corporation P.O. Box 188 Beech Grove. IN 46107

Re: IND 000718130

Letter of Warning

Dear Mr. Freudiger:

Our records indicate that the facility indicated above is not in compliance with the Indiana RCRA financial assurance rules for the following reason:

1. No filing of proof of financial assurance for closure, post-closure or liability coverage as required by 320 IAC 4.1-22-1 through 320 IAC 4.1-2-35. A copy of the Indiana RCRA financial assurance rules has been enclosed.

Failure to respond to this notice by April 30, 1987, will result in the referral of this matter to the Enforcement Section. If you have any questions regarding this, please contact me at AC 317/232-8901.

Yery truly yours,

Jeffrey W. Stevens

Legal Analyst

Solid and Hazardous Waste Management

JWS/tjd Enclosure

cc: Ms. Sally K. Swanson, U.S. EPA, Region V

State Form 4336

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

**INDIANAPOLIS** 

- CICE MEMORANDUM

RCRA File

DATE:

September 9, 1987

TO:

Refined Metals Corporation

THRU:

David Koepper DJK

FROM:

Jeff Blankenberger

Compliance Monitoring Section

compitance nontrolling scott

SUBJECT: Routine Interim Status Inspection on August 12, 1987, at Refined Metals, Inc.

3700 South Arlington Avenue Indianapolis, Indiana

IND 0007108130.

On August 12, 1987, Messers Bruce Hamilton, Bob Steele and I conducted a routine interim status inspection at the above mentioned facility. A pre-inspection file audit revealed that an inspection on June 18, 1985, found the facility to be in violation of most of the interim status requirements. That inspection resulted in the issuance of a Complaint Order (N-283), which has not been resolved. A second inspection was conducted on June 24, and July 1, 1985. No new violations were noted, therefore no additional enforcement action was taken. A second separate enforcement action was taken in February 1987 relative to biennial report requirements.

Refined Metals Inc., was represented by Messers. Ron Widner, Plant Manager; John Saucerman, Safety Coordinator; and Ms. Judith E. Overturf, Harrison & Moberly. The facility is a lead smelter of scrap batteries and other miscellaneous lead scrap. They have interim status for the storage of hazardous waste in piles.

The following violations of the interim status standards were noted during the inspection:

-Lack waste analysis on Exide battery scrap.

- -Waste analysis plan does not address hazardous waste from offsite.
- -Not inspecting hazardous waste containers, spill control equipment.

-Inadequate inspection log.

-Inadequate personnel training records for supervisors and emergency coordinators.

-Inadequate contingency plan.

- -Have not submitted unmanifested waste reports.
- -No immediate access to communication device.
- -Open containers of HW lead scrap.

Since April 15, 1987, the facility has received hazardous waste (D008) from Exide Corporation without a manifest. Scrap battery plates covered with lead oxide paste are shipped to Refined Metals. Also, between March 1987 and April 15, 1987, they received wastewater treatment sludge (D008) from Exide Corporation without a manifest. With the adoption of the new definition of hazardous waste on April 15, 1987, the lead waste is regulated and the WWT sludge is exempt.

Refined Metals Corporation Page 2

In conclusion, the facility is still in violation of many interim status standards. One violation not previously addressed concerned the acceptance of hazardous waste from Exide Corporation without a manifest. Other violations with the inspection schedule and contingency plan are due to the fact that the facility does not consider certain waste stream as hazardous.

The Material Storage Building in no way could be considered a tank. Water from dust control was noted entering the building on the south side and exiting on the northside through open doorways. No berm or curb existed to contain the flow of water in the building. Also, it appeared that water flowed toward the middle of the building from the sides where K069 baghouse dust is stored.

The KO69 storage area was not sloped in such a manner to provide containment.

A referral will be made to the Enforcement Section recommending that all new violations be included in the existing enforcement action in the form of an amended complaint.

JLB/rmw

cc: Mr. Dennis Zawodni, Enforcement Section

#### TSD RCRA Inspection Report

EPA Identification Number:	<u> </u>	<u>0007</u>	18130	
Installation Name: Tukens	I Meto	la Corp.	Beech Grove	Pla
Location Address: 370	0 8. 0	lengton	ave.	
city: Indianant	lis	Z.	IP 46204	
Date of Inspection: 8/12	/87 Time	of Inspection	10:00AM - 3:45PM	
Person(s) interviewed *	Title		Telephone	-
Ron Wednes	Plant	- Mariger	317/787-63	54
John Sauceman	Sifety	Coordinate	in in	
<i>-</i>			<del>-</del>	
Inspector(s)	Agency		Telephone	
Jeff Blankerlenger	IDEM	<u>უ</u>	317/232-4536	
Bob Steele.	h			
* Please identify corresponds	ence contact		mana ara a saghi.	
Installation Processes by Pro	ocess Code (EF	A Form 3510-3)		
S01 Container storage S03 Waste Pile storage D79 Injection well dispose D81 Land Application dispose T01 Tank Treatment T03 Incinerator treatment	sal D80 posal D83 T02	Surface in Landfill (Surface In Surface In S	mpoundment storage	
If Part A process codes are involved below.	listed above a	s TO4 please do	escribe the process	
Other activities  Generator Appendix GN  Transporter		*		
Appendix TR	• .			

- 1. Indicate any hazardous waste processes, by process code, which have been omitted from Part A of the facility's permit application.
- 2. Indicate any hazardous waste processes (by process code and line number on EPA Form 3510-3 page 1 of 5) which appear to be eligible for exclusion per 40 CFR 265.1(c). Provide a brief rationale for the possible exclusion.

. Type of Facility	(G, 1, 150) based o	n inspection 2	<u>.                                    </u>
(hazardous or non-	. Concentrate on p -hazardous):	rocesses that prod	fuce waste
	ee try	report a	red file
		<u> </u>	
			**************************************
	Source	Rate	Disposition
Streams/EPA #	Source		Disposition
Streams/EPA #	<del></del>		<del></del>
Streams/EPA #	<del></del>		Disposition  Neclaimed of
Hazardous Waste Streams/EPA #  1069 Bag Buse ead dross	<del></del>		<del></del>
Streams/EPA #	<del></del>		<del></del>
Streams/EPA #	<del></del>		<del></del>
Streams/EPA #	<del></del>		<del></del>
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Streams/EPA #	<del></del>		<del></del>
Streams/EPA #	<del></del>		<del></del>

5.5 0

5. List all wastes not listed in number 4 such as spent materials, sludges, byproducts, scrap batteries and scrap metals. Check the appropriate category for each material found. YPC UPER DRNA GOTP E D UM CA TT E RI Process Generating Waste Rate 45 tons fork Southsife Ceadsmetting ?

Wastes	continued-				
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		<del></del>			
~	_				
 Comment	s:				
	•				
	the company ng informat		or reclaim exemption p	lease i	nclude the
Was Typ	-	Generation Rate	How reclaimed & by Who		Quantity stored on Site
A					
•	· · · · · · · · · · · · · · · · · · ·		<del>/</del>		<del></del>
C D.	<del></del>	•			
·					
			imed in the manners li provided appendices.	sted be	low please
	-		•	YES	<u>NO</u>
A)	Waste Oil	Fuel- Appendix A			
B)	Lead Acid	Batteries - Appe	ndix B	<del></del> ,	
C)	Hazardous 1	Waste Fuel - App	encix C	<u>~</u>	
D)	Precious M	etals - Appendix	D		<del></del>
E)	Use Consti	tuting Disposal	- Appendix E		

8. Hazardous Waste On-Site	Amount	How Stored	Comments	
Bashouse Kub	<del></del>	Piles	Material To	je
Lead dross	11	N	n	
Lead scrape		container	n and o	uted
Batteries	over 30,000	palleto	outaide build	ing
9. Has the capacity allowed? List the type 320 IAC 4.1-38-2				
10. Indicate any TSD and the facility map (				-
11. Is the Annual Repo	<del></del>	Not provided	7	• •
12. List Transporters		ny	o per t	
Np	114 24703	us crup	med off sice	
	<del> </del>			
•	ent Program, OSHA,	etc.)		

#### General Facility Standards (paperwork)

YES NO NI 1) Has the Regional Administrator/Environmental Management Board been notified regarding: Receipt of hazardous waste from a foreign source? 40 CFR 265.12(a) (320 IAC 4.1-16-3) Facility expansion? 40 CFR 270.72(b) (320 IAC 4.1-38-3) C. Change of owner or operator? 40 CFR 265.12(b) (320 IAC 4.1-16-3) 2) General Waste Analysis: Has the owner or operator obtained a detailed chemical and physical analysis of the waste? 40 CFR 265.13(a)1 (320 IAC 4.1-16-4) Does the owner or operator have a detailed waste analysis plan on file at the facility? 40 CFR 265.13(b) (320 IAC 4.1-16-4) Does the waste analysis plan contain: parameters (and rationale for their choice) 1. 2. test methods 3. sampling method for representative sample frequency of analysis (and rationale) 5. off-site only: waste analysis from generators Additional waste analysis needed (when a change in waste type or process occurs) 265.193 (320 IAC 4.1-24-3) Tanks (see above) 265.225 (320 IAC 4.1-25-4)Impoundment (same as above) 265.252 (320 IAC 4.1-26-3) Waste Pile C. (same as above) 265.273 (320 IAC 4.1-27-3)Land Treatment d. (same as above) 265.341 (320 IAC 4.1-29-2)Incinerators e. (same as above) 265.375 (320 IAC 4.1-30-3) Thermal Treatment f. (same as above) 265.402 (320 IAC 4.1-31-3)Other Treatment (same as above)

c.	Does the waste analysis plan specify procedures for inspection and analysis of each movement of hazardous waste from off-site?  40 CFR 265.13(c) (320 IAC 4.1-16-4)	
3) Own	er or Operator Inspections:	_
	·	•
a.	Does the owner or operator inspect the facility for deterioration, malfunctions, operator errors, and discharges of hazardous waste that may affect human health or the environment?	
	40 CFR 265.15(a) (320 IAC 4.1-16-6)	
b.	Does the owner or operator have an inspection schedule at the facility? 40 CFR 265.15(b)2 (320 IAC 4.1-16-6)	<u> </u>
C,_	If so, does the schedule address the inspection	·
	of the following items: 40 CFR 265.15(b)1 (320 IAC 4.1-16-6)	•
	i. monitoring equipment?	
•	ii. safety and emergency equipment?	
	iii. security devices (including fences)?	<u></u>
	<pre>iv. operating and structural equipment (ie. dikes, pumps, etc.)?</pre>	<u></u>
	v. type of problems to be looked for during the inspection (e.g. leaky fittings, defective pump,	
	etc.)? 40 CFR 265.15(b)(2) (320 IAC 4.1-16-6)	_ w v
	vi. inspection frequency (based upon the possible deterioration rate of the equipment)?_ 40 CFR 265.15(b)(4) (320 IAC 4.1-16-6)	<u> </u>
3a) N	of inspecting container of lead	wante and
	Il control equipment. all en	metion out
7		+
	والمراجع والمنافع والمراجع والمنافع والم	so on vacali
ii) 2	afety cabinets not included	1

		•			YES	NO	NI
	vii. Mus	t include:	•				
	1.		tainer storage			<u>\( \lambda \) \( \lambda \) \( \lambda \)</u>	
	2.		74) (320 IAC 4 Weekly Tank S			NA	
		(See 265.19	94) (320 IAC	4.1-24-4)			
	3.		poard and week e impoundment:	kly dike inspect s?	1011	MC	
	4.		26) (320 IAC	<u>4.1-25-5)</u> tment, Chemical,			-
	₹•	Physical,	and Biologica	1 treatment show	ıld		
				ned by deteriora ng and unloading			
		areas (when	re spills are			NA	
d.		er or Operato as outlined		written inspect	ion	<b>V</b>	
	_	(1) (320 IA			•		<del>-</del>
e.	Are areas	s subject to	spills inspec	cted			
	daily who	en in use? )(4) (320 IA	•		-		
<b>.</b>		4			1.	•	+
		-				$\sim$	A & A ! . A
3 C VII	1.10	- Jane	does	net ad	ares	0	rainer
dre	rge/t	Tailers	o ola	not ad	dres	<u> </u>	
Scr.	rge/t	railers	<u> </u>			con	int as
	not in	niles	e cafet	+ Ornergen	ce Carl	7	int as
	not in Does the log or so	males owner or ope immary of own	erator maintainer or operator	- Innersen Lateration in an inspections?	ce Carl	7	ent as
f.	not in Does the log or su	owner or ope immary of own is. 15(d) (320	(ecc under a service or operator or operat	- Linusen L. Swin in an inspection or inspections?	ce care	7	ent as
	Does the Does the 40 CFR 26	owner of open immary of own is.15(d) (320 inspection is.15(d) (320	erator maintainer or operator of IAC 4.1-16-6	in an inspections?  in following into the control of the control o	ce care	7	est as
f.	Does the log or su do CFR 26 Does the 40 CFR 26 i. the	owner of open immary of own 55.15(d) (320 date and time	erator maintainer or operator lac 4.1-16-6 log contain the lac 4.1-16-6 me of the insp	in an inspections?  in following into the control of the control o	ce care	7	ent as
f.	Does the log or su do CFR 26 Does the 40 CFR 26 i. the	owner of open immary of own is.15(d) (320 inspection is.15(d) (320	erator maintainer or operator lac 4.1-16-6 log contain the lac 4.1-16-6 me of the insp	in an inspections?  in following into the control of the control o	ce care	7	ent as
f.	Does the log or so the log or so the log or so the log or so the log or so the log or so the log or	owner or open owner of owner of own of own of own of own of own of own of own of own of own of own of own of own of own of own own of own own own own own own own own own own	erator maintainer or operator lac 4.1-16-6 log contain the lac 4.1-16-6 me of the insp	in an inspections? in an inspections? in following info; bection?	ce care	7	ent as
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f.	Does the log or su 40 CFR 26 i. the lii. a no iv. the acti	owner of open owner of owner of owner of owner of owner of owner of owner of owner of owner of owner of owner of owner of owner of the owner of the owner ow	erator maintainer or operator log contain the log contain the log contain the log contain the log contain the log contain the log contain the log contain the log contain the log contain the log contain the log contain the log contain the log contain the log contain the log contain the log contains the log conta	in an inspections? in an inspections? in e following info; inection? inspection?	ce Care fire eleter  formation:	7	endiner
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f.	Does the log or su 40 CFR 26 i. the lii. a no iv. the acti	owner of open owner of owner of owner of owner of owner of owner of owner of owner of owner of owner of owner of owner of owner of the owner of the owner ow	erator maintainer or operator log contain the log contain the log contain the log contain the log contain the log contain the log contain the log contain the log contain the log contain the log contain the log contain the log contain the log contain the log contain the log contain the log contains the log conta	in an inspections? in an inspections? in e following info; inection? inspection?	ce Care fire eleter  formation:	7	urla
f.	Does the log or su 40 CFR 26 i. the lii. a no iv. the acti	owner of open owner of owner of owner of owner of owner of owner of owner of owner of owner of owner of owner of owner of owner of the owner of the owner ow	I feet under a feet under or operator maintainer or operator of the inspector? The observation ture of any respector of the inspector of the observation of the inspector of the observation of the observa	in an inspections? in an inspections? in e following info; inection? inspection?	ce Care fire eleter  formation:	7	ent as less)

	•	YES NO NI
4) Do	personnel training records include:	
a.	Job titles for the positions related to HWM 40 CFR 265.16(d)1 (320 IAC 4.1-16-7)	<del>-</del>
b.	The name of the employees filling each job title? 40 CFR 265.16(d)(1) (320 IAC 4.1-16-7)	<u> </u>
c.	Job descriptions including the required skills, education, or other qualifications and the duties of the personnel assigned to the position? 40 CFR 265.16(d)2 (320 IAC 4.1-16-7)	
d.	Description of both introductory and continuing training required for each job? 40CFR 265.16(d)(3) (320 IAC 4.1-16-7)	
e.	Records of training required in (d)? 40 CFR 265.16(d)4 (320 IAC 4.1-16-7)	
f.	Did facility pesonnel receive the required training	including:
	i) classroom or on the job	<u> </u>
<u></u> -	ii) within 6 months of hire	<u> </u>
	iii) annual review of training?	<u> </u>
g.	Are all training records maintained for current personnel and for at least three years for former employees?  40 CFR 265.16(e) [320 IAC 4.1-16-7(e)]	<u>_</u>
a) La	he jobdescriptions for emergina o	andinatos 1
ر ر چ	annios	/
d.)+ s	2i) Cack description of training	- and read
- /	of training for condinato	a / quel mago

pote

- 1) Does the Contingency Plan contain the following information:
  - a. The actions facility personnel must take to comply with 265.51 (4.1-18-2) and 265.56 (4.1-18-7) in response to fires, explosions, or any unplanned release of hazardous waste? (If the owner has a Spill Prevention, Control, and Countermeasures (SPCC) Plan, he needs only to amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this Part (as applicable).
  - b. Arrangements agreed by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services 320 IAC 4.1-18-3
  - c. Names, addresses, and phone numbers of all persons qualified to act as emergency coordinators?
  - d. A list of all emergency equipment at the facility which includes the location and physical description of each item on the list and a brief outline of its capabilities? 40 CFR 265.52(e) (320 IAC 4.1-18-3)
  - e. An evacuation plan for facility personnel where there is a possibility that evacuation could be necessary? (This plan must decribe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes.)
    40 CFR 265.52(f) (320 IAC 4.1-18-3)

### 2) Emergency Coordinator:

- a. Is the facility Emergency Coordinator identified? 40 CFR 265.52(d) (320 IAC 4.1-18-3)
- b. Is coordinator familiar with all aspects of site operation and emergency procedures? 40 CFR 265.55 (320 IAC 4.1-18-6)
- c. Does Emergency Coordinator have the authority to carry out the Contingency Plan? 40 CFR 265.55 (320 IAC 4.1-18-6)

(a) The plan only addresses 1569 relative to "any cudden catactraphic or unusual event". Does not address other works alreams a reservent

excla five explorar.

Id) do not include location, physical description

In interest that also in not requi

Pre	paredness and Prevention	YES NO NI
1)	Has the owner or operator attempted to make arrangements with local authorities in case of an emergency at the facility?  40 CFR 265.37 (320 IAC 4.1-17-7)	
2)	Are copies of the Contingency Plan available at the site and local emergency organizations? 40 CFR 265.53 (320 IAC 4.1-18-4)	-
3)	Emergency Procedures	
	If an emergency situation has occurred at this facility, has the Emergency Coordinator followed the emergency procedures listed in 265.56 (320 IAC 4.1-18-7)?	_ NP_
MAN	IFEST SYSTEM, RECORDKEEPING, AND REPORTING:	
4)	Use of Manifest System:	
	a. Does the facility follow the procedures listed in 265.71 (4.1-19-2) for processing each manifest?  (Particularly sending a copy of the signed manifest back to thegenerator within 30 days after delivery.)	<u></u>
5)	b. Are records of past shipments retained for 3 years?  40 CFR 265.71(b)5 (320 IAC 4.1-19-2)  Does the owner or operator meet requirements regarding manifest discrepancies? (Off-site facilities only)  40 CFR 265.72 (320 IAC 4.1-19-3)	<u> </u>
	Perewed 30 montest shy	ments between

3)	Oper	ating	Record:	YES	NO	<u>NI</u>
	a.		owner or operator have a operating record? FR 265.73(a)			•
	b.		the owner or operator maintain an operating rd that contains the following information?			
		i.	The method(s) and date(s) of each waste's treatment, storage, or disposal as required in 40 CFR 265 Appendix I (320 IAC 4.1-32-2)? 40 CFR 265.73(b)(1) (320 IAC 4.1-19-4)			
		ii.	The location and quantity of each hazardous waste within the facility? (This information shall be cross referenced to a specific manifest number if the waste was accompanied by manifest.) 40 CFR 265.73(b)(2) (320 IAC 4.1-19-4)		_	
		iii.	A map or diagram of each cell or disposal area showing the location and quantity of each hazardous waste? (This information should be cross referenced to specific manifest number, if accompanied by a manifest.) 40 CFR 265.73(b)(2) (320 IAC 4.1-19-4)	<u>. — .</u>	. <del></del> .	<del></del>
		iv.	Records and results of all waste analyses, trial tests, monitoring data, and operating inspections? 40 CFR 265.73(b)(3)(5)(6) (320 IAC 4.1-19-4)			
		٧.	Reports detailing all incidents that required implementation of the Contingency Plan? 40 CFR 265.73(b)(4) (320 IAC 4.1-19-4)			
		vi.	All closure and post closure costs as applicable? 40 CFR 265.73(b)(7) (320 IAC 4.1-19-4)			
	·	H	we mothly inventory	8	3	peles,
	Ksu	11/2	- Stalling	•		

	anifested Waste Reports: plies only to Off-site facilities)	YES	<u>NO</u>	<u>NI</u>
a.	Has the facility accepted any hazardous waste from an off-site generator subject to 40 CFR 262.20 (4.1-8-1) without a manifest or shipping paper? 40 CFR 265.76 (320 IAC 4.1-19-7)	V		
b.	If "a" is yes, provide the identity of the source of the waste and a description of the quantity, type and date received for each unmanifested hazardous waste shipment.			-
c.	Has the facility submitted 8700-13B (unmanifested was report)?	te		
ace	exted badwate from Exist	le s	UR C	2 april
15	1987, without a manifest.	200	2	tel www
alue agn 6) cio	sure/Post-Closure:	nife	14	187 and
a	Is the closure plan available for inspection?  40 CFR 265.112(a) (320 IAC 4.1-21-3)			
b.	Is the post-closure plan available for inspection? (for disposal facilities only) 40 CFR 265.118(a) (320 IAC 4.1-21-8)		ND	·
		<del></del>	· · · · · · · · · · · · · · · · · · ·	
		<del></del>		-

<b>PHYSICAL</b>	FACILITY	INSPECTION
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YES NO NI

1)	Sec	urity - Do security measures include:  (If applicable)
		See 40 CFR 265.14 (320 IAC 4.1-16-5) for the following
	a.	24- hour surveillance?
	b.	i. Artificial or natural barrier around facility?
		ii. Controlled entry?
	c.	Danger sign(s) at entrance?
	<del>- , ,</del> -	
	- <del></del>	
		Openaredness and Proventions
	<del></del>	Part 265 Subpart C
2)	Mair	ntenace and Operation of Facility
	a.	Is there any evidence of fire, explosion, or release of hazardous waste or hazardous waste constituent?  40 CFR 265.31 (320 IAC 4.1-17-2)
3)		required, does the facility have following equipment:
	<b>a.</b>	Internal communications or alarm systems? 40 CFR 265.32(a) & 40 CFR 265.34(a) (320 IAC 4.1-17-3 & 5)

2) Notoil come runoff within fenced area on

Telephone or 2-way radios at the scene of operations?

Portable fire extinguishers, fire control, spill control equipment and decontamination equipment? Are water hoses, foam equipment, automatic spinklers or water spray equipment available? (Please specify)

40 CFR 265.32(c) [320 IAC 4.1-17-3(c)]

40 CFR 265.32(b) & 40 CFR 265.34(b) (320 IAC 4.1-17-3 & 5)

b.

3)	have	never waste is being handled do all personnel e immediate access to an alarm or communication ice (thru another employee if always available)?  40 CFR 265.34(a) (320 IAC 4.1-17-5)	YES NO NI
4)		ting and Maintenace of Emergency ipment:	
	a.	Has the owner or operator established testing and maintenace procedures for emergency equipment? 40 CFR 265.33 (320 IAC 4.1-17-4)	<u></u>
	b.	Is emergency equipment maintained in operable condition? 40 CFR 265.33 (320 IAC 4.1-17-4)	<u> </u>
	5)	Does the owner or operator maintain adequate aisle space for the movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment? (This applies to access—for this equipment to reach hazardous waste management areas)	
		40 CFR 265.35 (320 IAC 4.1-17-6)	
3,	m	teral Stone Building	tof the

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# Use and Management of Containers Note: use additional sheets if needed!

		YES NO NI
1)	Are containers in good condition? 40 CFR 265.170 (320 IAC 4.1-23-1)	¥
2)	Are containers compatible with waste in them? 40 CFR 265.172 (320 IAC 4.1-23-3)	¥,
3)	Are containers managed to prevent leaks? 40 CFR 265.173(b) (320 IAC 4.1-23-4)	<u> </u>
4)	Are containers stored closed? 40 CFR 265.173(d) (320 IAC 4.1-23-4)	
5)	Are ignitable and reactive wastes stored at least 15 meters (50 feet) from the property line? (Indicate if waste is ignitable or reactive).  40 CFR 265.176 (320 IAC 4.1-23-6)	_ NA_
6)	Are incompatable wastes stored in separate containers? (If not the provisions of 265.17(b) apply) 40 CFR 265.177(a) (320 IAC 4.1-23-7)	
7)	Are containers of incompatible waste separated or protected from each other by physical barriers or sufficient distance? 40 CFR 265.177(c) (320 IAC 4.1-23-7)	
8)	If required, are the following special requirements for ignitable, reactive, or incompatible wastes addressed? 40 CFR 265.17(a) (320 IAC 4.1-16-8)	
	a. Special handling?	
	b. No Smoking signs?	
	c. Separation and protection from ignition sources?	
9)	Does the container storage area have adequate aisle space (about 2.5 feet) 320 IAC 4.1-23-4 (c)	<u> </u>
10)	Can containers be inspected for leaks or deterioration without moving the containers during the inspection?  320 IAC 4.1-23-4(c)	<u> </u>
7	Acted many open drums	J
チ	way soed ware	-
	•	

NA

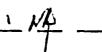
# Tanks Note: use additional sheets if needed !

		-	YES	NO	NI			
11	Ara	tanks used to store only those						
• ,		tes which will not cause corrosion,						
		kage or premature failure of the						
	tan							
		CFR 265.192(b) (320 IAC 4.1-24-2)						
2)		uncovered tanks have at least			-			
<b>L</b> /		cm (2 feet) of free-board, or						
		es or other containment structures?						
		CFR 265.192(c) (320 IAC 4.1-24-2)						
3)								
٠,		continuous feed systems have a te-feed cut-off?						
4)		CFR 265.192(d) (320 IAC 4.1-24-2)						
4)		reactive & ignitable wastes in						
		ks protected or rendered nonreactive						
		non-ignitable?						
		icate if waste is ignitable or						
		ctive. (If waste is rendered						
		-reactive or non-ignitable, see						
	treatment requirements.)							
<b>.</b> \		CFR 265.198 (320 IAC 4.1-24-6)						
5)		the owner or operator observed the National Fire Prote	ction					
		ociations buffer zone requirements for tanks containing	ignit	able	or			
		ctive wastes?						
	40	CFR 265.198(b) (320 IAC 4.1-24-6)						
		Tank especitive estimate						
		Tank capacity:gallons						
		Tank diameter: feet						
		idik utalietet.						
		Distance of tank from property line	£	eet				
		Distance of tank from property fine	<del></del> ''	EEL				
	150	e table 2-1 through 2-6 of NFPA's "Flammable and Combus	table '	l four	de			
		= -1977" to determine compliance.)	Labie !	Liqui	us			
	Cour	- 1977 to determine compilance.						
6)	īf ı	required, are the following special requirements for						
Ο,		itable, reactive, or incompatible wastes addressed?						
	An (	CFR 265.17(a) (320 IAC 4.1-16-8)						
	70 (	TR 203.17(4) (320 TAC 4.1-10-0)						
	a.	Special handling?						
	u.	Special nanating:		—				
	b.	No Smoking signs?						
	υ.	No shoring signs:						
	c.	Separation and protection from						
	••	ignition sources?						
		ighteron sources:		_	<del></del> .			
					·			
		•						
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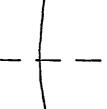
PRE	-TRA	SPORT REQUIREMENTS:			
			YES	NO	<u>NI</u>
1)	(red	raste packaged in accordance with DOT regulations? uired prior to movement of hazardous waste off-site) FR 262.30 (320 IAC 4.1-9-1)		<u>//</u>	<u></u>
2)	DOT (Red	waste packages marked and labeled in accordance with regulations concerning hazardous waste materials? uired for movement of hazardous waste off-site) FR 262.31-261.32 (320 IAC 4.1-9-2 & 3)		<u>√</u>	
		•			
hazi (32) [sei tanl	ardou O IAC e 265 ks an	ite accumulation of generated hazardous wastes. A HWMF s waste it generates either (A) in its storage facility 4.1-15-1)] or (B) in accordance with 40 CFR 262.34 (32.1(c)(7) (320 IAC 4.1-15-1)]. Option B restricts all a d containers. If the installation elects option A, che and skip to RECORDKEEPING AND REPORTING. If the ins	/ [265 20 IAC accumu ack th	.1(b) 4.1- lations is	·9-5)
e le	cts	ption B, complete the following observations:  Note: use additional sheets if needed:			
	a.	Is the container clearly marked with the start of accumulation date? 40 CFR 262.34 (320 IAC 4.1-9-5)		_	
	b.	Are all containers visible for inspection? 40 CFR 262.34(a)(2) (320 IAC 4.1-9-5)	-		
	c.	Have more than 90 days elapsed since the date inspected in (a)? 40 CFR 262.34 (320 IAC 4.1-9-5)			
	d.	Do wastes remain in accumulation tanks for more than 90 days? 40 CFR 262.34 (320 IAC 4.1-9-5)			
	e.	Is each container and tank labeled or marked clearly with the words "Hazardous Waste"? 40 CFR 262.34 (320 IAC 4.1-9-5)			
			<del></del>	<del></del>	

#### RECORDKEEPING AND REPORTING:

1) Has the generator made a proper hazardous waste determination for all solid wastes generated at the facility? 40 CFR 262.11 (320 IAC 4.1-7-2)



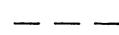
2) Have <u>all</u> all test results and analyses needed for hazardous waste determination been done? Are they retained on-site for at least three years?
40 CFR 262.11 (4.1-7-2) & 40 CFR 262.40 (4.1-7-2)



3) Has the generator submitted biennial reports and exception reports as required?
320 IAC 4.1-10-2 and 320 IAC 4.1-10-3



4) Are all test results and analyses needed for hazardous waste determinations retained for at least three years? 40 CFR 262.40 (320 IAC 4.1-10-1)



### APPENDIX TR

SCO	PE:	123	110	112
1)	Complete this Appendix if the owner or operator transports hazardous waste subject to 40 CFR 263.10 (320 IAC 4.1-10-1)		<u>N</u>	1
2)	Does the transporter transport hazardous waste into the U.S. from abroad?			
3)	Does the transporter transport hazardous waste out from the U.S.?			
4)	Does the transporter mix hazardous waste of different DOT shipping descriptions by placing them into a single container?			
MAN	IFEST SYSTEM AND RECORDKEEPING:			
1)	Are copies of completed manifests available for review and retained for three years? 40 CFR 263.22 (320 IAC 4.1-13-3)			
2)	Estimate the number of manifests for shipments completed during the past 6 months.			
-3)	Examine a representative number of manifests. Indicate number examined.			
4)	Did the transporter properly sign and date the manifests examined? 40 CFR 263.20 (320 IAC 4.1-13-1)		1	
5)	Do any manifests indicate shipments delivered to other than the designated facility?			/
	(If (5) is "NO", skip 6 and 7.)		V	
6)	Do any manifests indicate shipments delivered to other than an alternate facility?			
7)	Are shipments delivered to alternate facilities <u>only</u> because emergency prevents delivery to the designated facility?			
	40 CFR 263.21 (320 IAC 4.1-13-2)			
		<del> </del>	<del></del>	

NA

## Surface Impoundments

40 CFR 265, Subpart K

		YES NO NI
1)	Do surface impoundments have at least 60 cm (2 feet) or freeboard? 40 CFR 265.222 (320 IAC 4.1-25-2)	
2)	Do earthen dikes have protective covers?	
	40 CFR 265.223 (320 IAC 4.1-25-3)	
3)	Are reactive & ignitable wastes rendered non-reactive or non-ignitable before storage in a surface impoundment? (If waste is rendered non-reactive or non-ignitable, see treatment requirements.)	
	40 CFR 265.229 (320 IAC 4.1-25-7)	
4)	Are incompatable wastes stored in different impoundments? (If not, the provisions of 40 CFR 265.17(b) apply.) 40 CFR 265.230 (320 IAC 4.1-25-8)	
5)	If required, are the following special requirements for ignitable, reactive, or incompatible wastes addressed?  40 CFR 265.17(a) (320 IAC 4.1-16-8)	
	a. Special handling?	
	b. No Smoking signs?	
	c. Separation and protection from ignition sources?	
	· · · · · · · · · · · · · · · · · · ·	

 $N \nabla$ 

### GROUNDWATER MONITORING

40 CFR Subpart F

Complete this section for facilities that treat, store, or dispose of hazardous waste in landfills, surface impoundments and/or by land treatment.

		YES	NO	NI	
1)	Has the owner or operator of the facility implemented a groundwater monitoring system?				
	40 CFR 265.90(a) (320 IAC 4.1-20-1)				
2)	Has the owner or operator of the facility implemented an alternate groundwater monitoring system as described in 265.90(d) (320 IAC 4.1-20-1)?				



### APPENDIX GN

Complete this section if the owner or operator of a TSD facility also generates hazardous waste that is subsequently shipped off-site for treatment, storage, or disposal.

Man	ifest	Requirements:	YES	<u>NO</u>	NI
1)	for	the operator have copies of the manifest available review? FR 262.40 (320 IAC 4.1-10-1)			
2)		ine manifests for shipments in past 6 months. Indicate oximate number of manifested shipments during that peri			·
3)	info info crit	he manifest forms examined contain the following rmation: (If possible, make copies of, or record mation from, manifest(s) that do not contain the ical elements).  FR 262.21 (320 IAC 4.1-8-1)			
	a.	Manifest document number? (A sequential number for all manifests before September 20, 1984 and a five digit unique number after September 20, 1984.)			
	b.	Name, mailing address, telephone number, and EPA ID number of generator?			
	c.	Name, telephone number (4.1-14-3) and EPA ID Number of Transporter(s)?			
	d.	Name, Address, telephone number (4.1-14-3) and EPA ID Number of designated permitted facility?			
	e.	The description of the waste(s)(DOT shipping name, DOT hazard class, DOT identification number)?			
	f.	The total quantity of waste(s) and the type and number of containers loaded?	_		
	g.	Required certification?			
	h.	Required signatures?			
	i.	EPA hazardous waste number (4.1-14-3)?			
					<del></del>

	NOT received a signed copy from the designated facility days of the date of shipment.	thin the last generator has y within 35
b.	For manifests indicated in (4a), enter the number for a generator has submitted exception reports (40 CFR 262.4 (320 IAC 4.1-10-3) to the Regional Administrator.	which the 1 12)
hazar	dous waste?	
RNATI	ONAL SHIPMENTS:	
40 CF	R 262.50 (320 IAC 4.1-11-1)	
_		
<b>a.</b>	Exporting hazardous waste; has a generator:	
	Exporting hazardous waste; has a generator:  i. Notified the administrator in writing?	
	<ul> <li>i. Notified the administrator in writing?</li> <li>ii. Obtained the signature of the foreign consignee confirming delivery of the waste(s) in the</li> </ul>	
	If re hazar 40 CF RNATI	(320 IAC 4.1-10-3) to the Regional Administrator.  If required, are placards available to transporters of hazardous waste?  40 CFR 262.33 (320 IAC 4.1-9-4)  RNATIONAL SHIPMENTS:  Ras the installation imported or exported hazardous waste?  30 CFR 262.50 (320 IAC 4.1-11-1)  (If answered Yes, complete the following as applicable.)

MD

# Appendix A Used Oil Burned for Energy Recovery Section I. is for marketers and Section II. for burners

NOTE: Only companies who market directly to burners, burn used oil themselves, or market to other marketers are regulated by this section, however, there are some exceptions.

See [266.41(b)(2)iii] and [320 IAC 4.1-32.5-12(b)(2)iii] and [266.43(a)] and [320 IAC 4.1-32.5-13(a)] for exceptions.

	]	Marketers Marketers	YES	NO	NI
1)	S	ne marketer determined if the used oil fuel is specification or off-specification? 266.43(b)1] and [320 IAC 4.1-32.5-14(b)1]			
2)	Has th	ne marketer notified of his used oil fuel activity? 266.43(b)3] and [320 IAC 4.1-32.5-14(b)3]			
	<u> </u>	PECIFICATION USED OIL FUEL ONLY			
3)	ग	record of analysis(or other information used to take the determination) kept by the marketer for			
		hree years ? 266.43(b)(6)i] and [320 IAC 4.1-32.5-14(b)(6)i]			
4)		perating log maintained containing the following nformation;			
	a. T	he name and address of the facility receiving the shipment ? [266.43(b)(6)(i)A] and [320 IAC 4.1-32.5-14(b)(6)(i)A]			
	<b>b.</b> T	he quantity of used oil fuel delivered ? [266.43(b)(6)(i)B] and [320 IAC 4.1-32.5-14(b)(6)(i)B]			
	c. T	he date of shipment delivery ?			
	d. A	cross reference to the used oil analysis information per number 3 above ? [266.43(b)(6)(i)D] and [320 IAC 4.1-32.5-14(b)(6)(i)D]	<del></del> .	<del></del>	

Comments:

### OFF-SPECIFICATION USED OIL FUEL ONLY



YES NO NI

5)	Has	the marketer provided an invoice to the burner for all used oil fuel shipments which contains the following information;			
	a.	An invoice number [266.43(b)(4)i] and [320 IAC 4.1-32.5-14(b)(4)i]			
	b.	His EPA identification number as well as that of the receiving facility? [266.43(b)(4)ii] and [320 IAC 4.1-32.5-14(b)(4)ii]			<del></del>
	c.	The names and addresses of the shipping and receiving facilities ? [266.43(b)(4)iii] and [320 IAC 4.1-32.5-14(b)(4)iii]	en-liverage		
	d.	The quantity of off-specification used oil to be delivered ? [266.43(b)(4)iv] and [320 IAC 4.1-32.5-14(b)(4)iv]			
<del></del>	e.	The date(s) of shipment or delivery? [266.43(b)(4)v] and [320 IAC 4.1-32.5-14(b)(4)v]			
	f.	The statement "This used oil is subject to EPA regulation under 40 CFR Part 266"? (Indiana Equivalent; 320 IAC 4.1-32.5) [266.43(b)(4)vi] and [320 IAC 4.1-32.5-14(b)(4)vi]			
6)	Has	the marketer obtained a one-time certification from burner or other marketer prior to shipping any off-specification fuel that:			
	<b>a.</b>	The burner or marketer has notified for waste oil fuel activities ? [266.43(b)(5)(i)A] and and [320 IAC 4.1-32.5-14(b)(5)(i)A]		•	
	b.	If the recipent is a burner that the waste will be burned only in approved industrial furnaces or boilers [See 266.41(b)]? [266.34(b)(5)(i)B] and [320 IAC 4.1-32.5-14(b)(5)(i)B]	· · · · ·		
7)	Has	the marketer provided other marketers with certification of compliance with notification to the EPA of waste oil fuel activities ? [266.34(b)(5)(ii)] and [320 IAC 4.1-32.5-14(b)(5)(ii)]	-		

NA

#### II. Burners

		YES	NO	NI	
1)	Has this facility notified as a Burner? (Note: some onsite burning is exempted as is burning specification fuel. Check for exemptions and answer numbers 3 and 4) [266.44(b)] and [320 IAC 4.1-32.5-15(b)]				-
2)	Has the burner provided the marketer with a certification that he has notified of waste oil fuel activites and that he will burn only in approved furnaces or boilers?  [266.44(c)] and [320 IAC 4.1-32.5-15(c)]			•	-
3)	If the burner is the generator has he obtained analyses to document claims that the oil is specification fuel not needing notification? [266.44(d)1] and [320 IAC 4.1-32.5-15(d)1]				-

- 4) If the burner treats the oil to meet specification does he document the results though analyses or other documentation?
  [266.44(d)2] and [320 IAC 4.1-32.5-15(d)2]
- 5) Are certification forms provided to marketers, invoices

  received from marketers and copies of analyses etc.

  required in numbers 3 and 4 above maintained on

  file for at least three years ?

  [266.44(e)] and [320 IAC 4.1-32.5-15(e)]

#### Comments:

# Appendix C Hazardous Waste Burned for Energy Recovery Section I. is for marketers and Section II. for burners

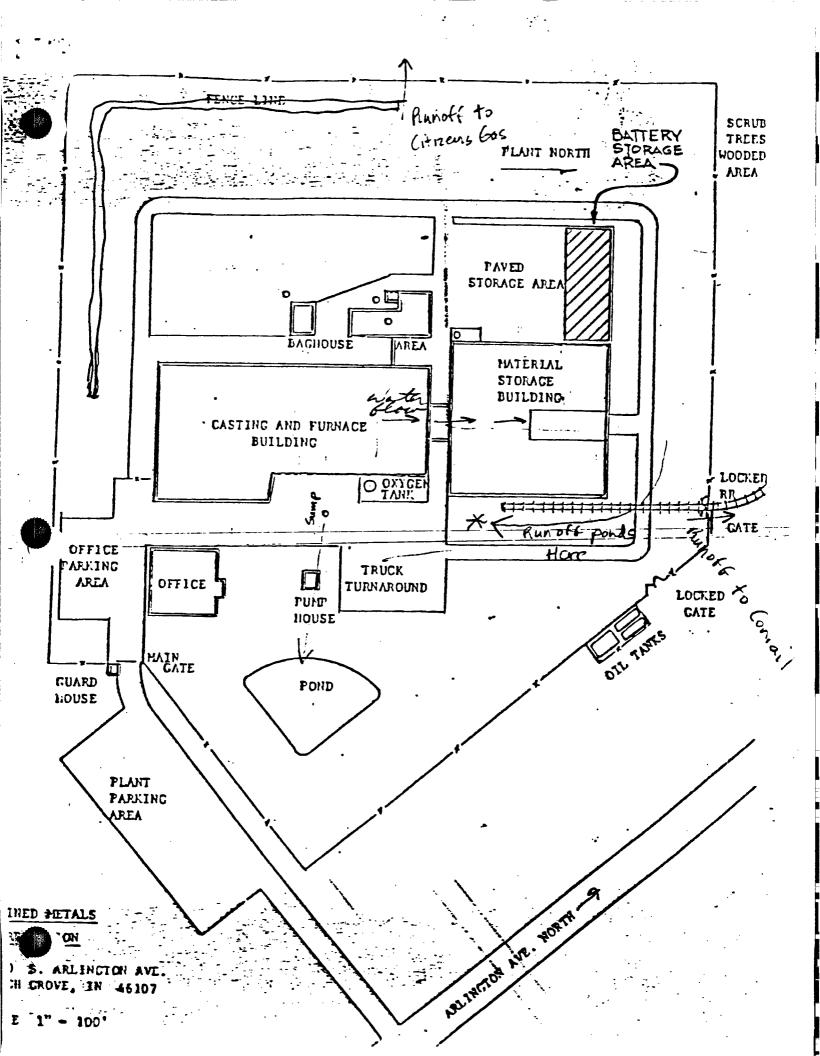
	I. <u>Marketers</u>	YES	<u>NO</u>	NI
1)	Has this facility notified as a Marketer? [266.34(b)] and [320 IAC 4.1-32.5-9(b)]			
2)	Is the hazardous waste fuel stored as a hazardous waste? [266.34(c)] and [320 IAC 4.1-32.5-9(c)]			
3)	Is the hazardous waste fuel shipped offsite with a manifest ? [266.34(d) and [320 IAC 4.1-32.5-9(d)]	-		
4)	Has the marketer obtained a one-time certification from the burner or other marketer that;			
	a. The burner or marketer has notified of their waste as fuel activities? [266.34(e)(1)i] and [320 IAC 4.1-32.5-9(e)(1)i]			
	b. If the recipent is a burner that the waste will be burned only in approved industrial furnaces or	<u> </u>		
	boilers [See 266.31(a)(2)b] ? [266.34(e)(1)1i] and [320 IAC 4.1-32.5-9(e)(1)1i]			
5)	Has the marketer provided a one-time certification that he has notified of his waste as fuel activity prior to his first shipment of fuel to that another marketer?  [266.34(e)(2)] and [320 IAC 4.1-32.5-9(e)(2)]	•		
6)	Are all certifications received or sent by the marketer maintained at the site for at least three years ? [266.34(f)] and [320 IAC 4.1-32.5-9(f)]			

#### Comments:

#### II. Burners

		YES NO NI
1)	Has this facility notified as a Burner? [266.35(b)] and [320 IAC 4.1-32.5-10(b)]	
2)	Is the hazardous waste fuel stored (or accumulated for generators who burn on site) as a hazardous waste ? [266.35(c)] & 2] and [320 IAC 4.1-32.5-10(c)] & 2]	144
3)	Has the burner provided the marketer with a certification that he has notified of waste as fuel activites and that he will burn only in approved furnaces or boilers? [266.35(d)] and [320 IAC 4.1-32.5-10(d)]	<u>NA</u>
4)	Are certification forms provided to marketers maintained on file for at least three years ? [266.35(e)] and [320 IAC 4.1-32.5-10(e)]	_ M
Com	ments:	

Do not accumulate HW. pun to Leuring Only burn onsite generated mineral aprieta



#### STATE BOARD OF HEALTH

#### **INDIANAPOLIS**

#### OFFICE MEMORANDUM

DATE:

February 18, 1986

TO:

David J. Koepper

Compliance Monitoring Section

FROM:

Gregory A. Busch 2082/19

Ouality Assurance Officer

SUBJECT: Review of Laboratory Results for Samples Collected on

November 21, 1985, at Refined Metals

Marion County

THRU:

Jack C. Corpuz James E. Traylor 3E7420 Guinn P. Doyle 42/20 James M. Hunt

U.S. ETA, REGION V WASTE MANAGER AND DIVISION CFFICE OF THE DIRECTOR

I have reviewed the attached laboratory results. I have determined that the results are acceptable for use in enforcement actions. These results have been evaluated for the quality criteria contained in the Indiana Quality Assurance Project Plan. Any qualifications to the acceptance of this data will be identified in this memo.

Field duplicate samples are used to establish the representativeness of the field sampling (or the sampling variability). The field duplicates compare well for all metals except arsenic.

The total metal values for arsenic, cadmium, and lead are all high, especially the levels for lead. All samples are EP Toxic for lead. Two samples (CO372 and CO374) are EP Toxic for cadmium.

GAB/kp

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# INDIANA STATE BOARD OF HEALTH DIVISION OF LAND POLLUTION CONTROL FIELD MAP

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#### VISUAL SITE INSPECTION REFINED METALS CORPORATION IND 000718130

Date of Inspection:

Weather:

Participants:

February 24, 1987

Clear, moderately cold Judy Kleiman, Region V

Dave Koepper, IDEM

Ron Widner, Refined Metals

#### Facility Description

Refined Metals reclaims lead from spent lead-acid batteries. The batteries are crushed and fed into a blast furnace along with other waste materials. The melted lead is collected from the bottom of the blast furnace in large vats and is then formed into lead ingots as the final product. The emissions from the blast furnace are caught in baghouses and the baghouse dust or sludge is recycled back into the furnace. The slag from the furnace is also recycled back into the furnance.

#### Summary of Visual Inspection

The general appearance of this facility indicates poor housekeeping practices. Large portions of the property were gray from lead dust. Gray puddles were observed on the north and west sides of the facility; as well as a gray layer covering the soil. When the top layer of soil was scraped away, a more typical soil color was revealed.

In the northeast corner of the property, pieces of broken batteries were noted buried in the soil and a reddish coloration was observed in spots in the soil (photograph 1).

Along the north edge of the property, the ground sloped down toward a wire fence. The soil here was distinctively gray on top (photograph 2) but this gray layer was easily scraped away to reveal a more typical soil color.

On the north side of the facility, a drainage ditch led off-site (photograph 3). The immediate area here was a very soft mud overlaid with gravel. The mud was a distinctive gray color (photograph 4 ) indicating possible contamination from lead dust. The wetness here and the adjacent drainage ditch would carry any surface lead off-site, as well as down into the soil.

Several gray puddles were observed in the area around the breaker building. Photographs 5 and 6 show some of these gray puddles.

On the west side of the property there was another drainage ditch which led off-site towards Citizen's Gas. This would be a route for lead contamination to be carried off-site. The water in this area could also carry contamination down deep into the soil here. It is suspected, therefore, that lead contamination may exist at depths below the surface.

## Unloading Area

Batteries are unloaded from the trucks onto a concrete loading dock (photograph 7). The facility representative said that the batteries do not remain on the loading dock for more than 8 hours. After being unloaded, the batteries are stored in trailer trucks near this loading dock.

### Storage Area

Batteries are stored in eleven trailer trucks near the unloading dock on the east side of the property. (photograph 8). These trucks were all parked on the concrete parking area. This type of storage unit is obviously mobile, as trailers could easily be brought in or removed from the property.

#### Sump

On the driveway, north of the building, was a area where trucks unloaded already broken batteries. There is a sump here covered with steel plates (photograph 9). This sump is to catch run-off from the materials building, where water is used for dust control. The solids settle out here in the sump and are then combined with the battery plates in the blast furnace.

### Breaker Building

The unbroken batteries received are unloaded directly into the breaker building. Photograph 10 shows a truck backed up to this building to unload the batteries. A stream of liquid which could have been sulfuric acid was observed dripping from the truck. A large battery breaker inside the building was receiving the batteries and crushing them. Photograph 11 shows the battery breaker inside the breaker building. Sulfuric acid was observed dripping out below from the battery breaker.

#### Baghouses

Three baghouses are located on the west side of the building (photograph 12). A new baghouse is under construction here (photograph 13). It is likely that the gray layer covering the soil on this property is the result of a leak in the baghouse operations.

The south side of the property was being used as a maintenance area (photograph 14) and a scrap yard (photograph 15). Large pieces of scrap cast iron were stored here for use in the blast furnace. The iron serves as a reducing agent for the lead in the batteries.

# Waste Piles, Materials Storage Building

From the breaker house, we went into the materials storage building. Several large piles of waste materials are stored here before being fed into the blast furnace by way of a conveyor belt. Among the piles of waste materials were emptied and smashed cans/drums in which battery scraps and off-spec battery paste had been received, dust and sludge from the baghouses (K069), flue dust and dross, and slag from the furnace (photographs 16, 17, 18, 19). The floor

of this building was concrete but was covered with a layer of mud or sludge which was assumed to be materials from these waste piles mixed with water (photograph 20). Water is used here for dust control and the excess water from this building drains into the 3 part sump outside the building (photograph 9) where the solids would settle out.

#### Blast Furnace

From the storage building, the materials were fed into the blast furnace by way of a conveyor belt. The molten lead collects at the bottom of the furnace (photograph 21) and is forced out from the bottom by air pressure into a trough which passes into the adjacent room. The molten lead is collected in large vats and is cast into ingots as a final product. The dross from these vats or kettles is stored in the materials building and is recycled back into the furnace.

The slag which falls on top of the lead in the furnace is removed and stored in the materials building and is eventually fed back into the furnace. Slag which cannot be recycled further is taken to the South Side landfill.

### Conclusion

This visual inspection has indicated that areas of this facility appear to be contaminated. The gray color of the soil and of the puddles on the east, north and west sides of the property indicate the probable presence of lead. The drainage ways leading off-site to the north and west are of particular concern, as any surface contamination would be easily carried off-site by storm water run-off.

Probable sources of contamination are leaks from the baghouses or poor management of run-off from the material building.

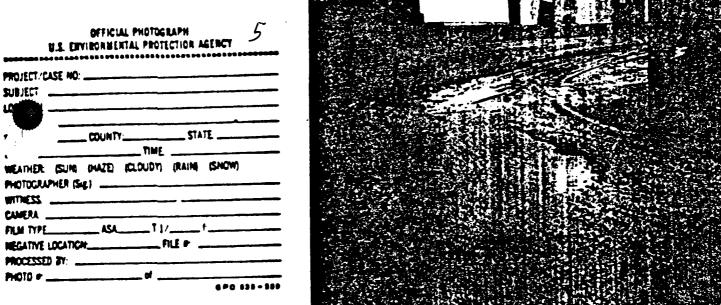
#### Recommendation

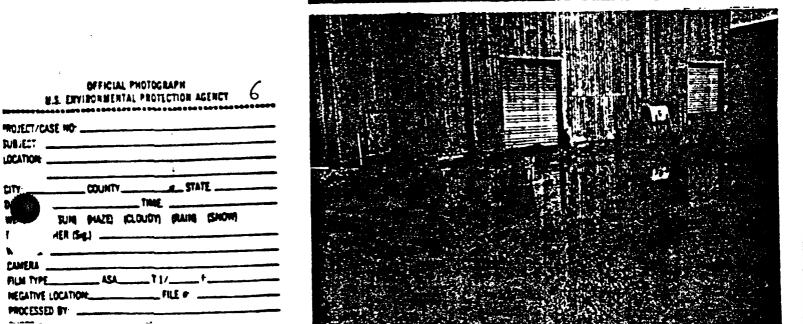
This facility requires further investigation to determine the full nature and extent of contamination. This should include analysis of deep soil cores and the installation of wells to assess the condition of the ground-water. Sampling by IDEM in November 1985 has indicated lead in all samples, but no plan for corrective action has been yet been developed.

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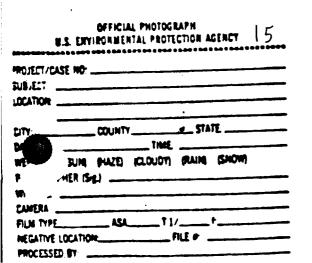
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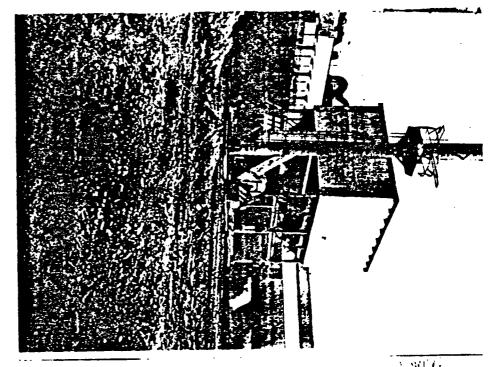
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OFFICIAL PHOTOGRAPH U.S. ENVIRONMENTAL PROTECTION AGENCY

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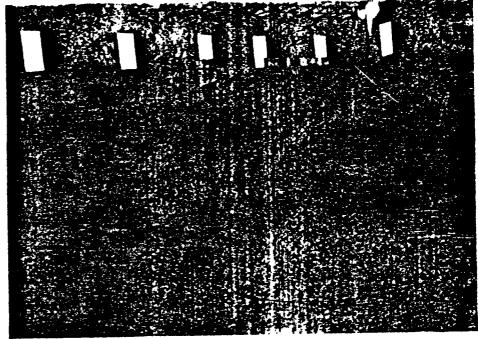
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OFFICIAL PHOTOGRAPH

U.S. ENVIRORMENTAL PROTECTION AGENCY

PROJECT/CASE NO:

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COUNTY\_\_\_\_\_\_\_STATE

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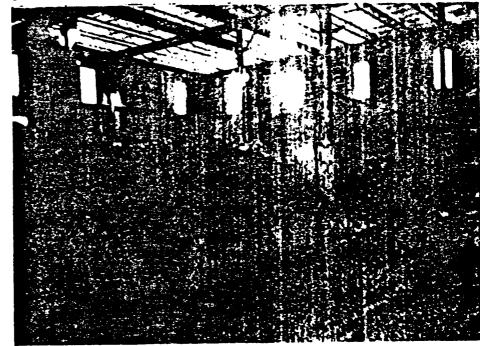
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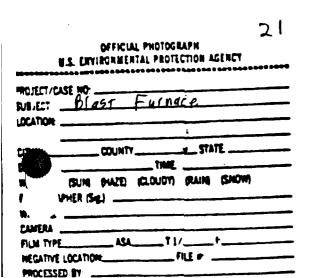
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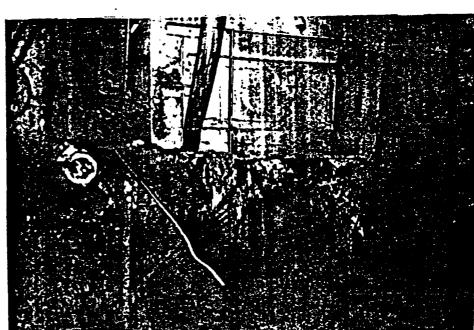
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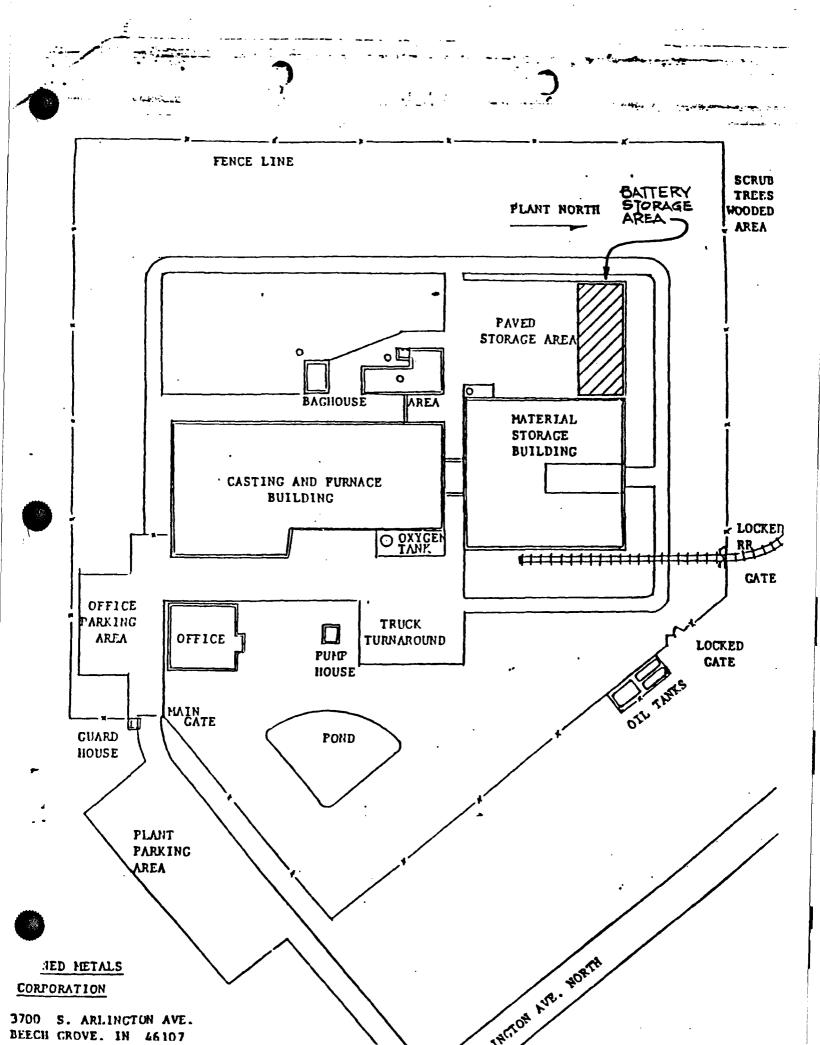
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4-0 131-310









# PRELIMINARYT REVIEW REPORT (PR) RCRA FACILITY ASSESSMENT (RFA)

	Nama Referred Metalz	
Facility PA ID	Hame	· · · · · · · · · · · · · · · · · · ·
reparer	Judy Kleimen	
DateF	-et- 28, 1937	<del></del>
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-	<u>Unit</u>	ts (attach additional sheets as needed):  Release (yes/no/unknown/suspected)
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ii.	Wartepiles	probably
111.	Batiery Florogetrea Wastepiles Baghauser	stangly suspected
iv.	sump	strongly suspected
٧.	Black furnace	
	Gurface Impoundment	unknown
vii.	,	
viii.		
ix.		

Unit Type: <u>Wastefile</u> , Age:	Regulatory Status:
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Waste Type: <u>K069</u> Volume:	
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	Capacity:	
	Period of Operation:	
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# Visual Site Inspection (VSI)

Specific Objectives:
I dentify areas of wastrule. Took to
are all wasierite endown? are there crech
in the concrete
Sook for aring of drainings arisem where
- does water used for dut control 30 to ilon
In drawing existen connected with senior
Doer soil or regetation indicate continuedon
Lead at areas that were sampled by
TREM in Nov of 1985
a) along varified of paved area, nanth of plant
3) from a dint file west of the waterwater breaker
3) from a dint file west of the wastervater bracker
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#### \*IN DATE\*

DUNS: 09-814-7655 REFINED METALS CORP DATE PRINTED MAR 07 1988

RATING BRANCH

BOX 188

EMPLOYS

S 50

INDIANAPOLIS IN 46206 3700 SOUTH ARLINGTON AVE

SIC NO. 33 41

INDIANAPOLIS IN 46203

TEL: 317 787-6364

BRANCH MANAGER: RON WIDNER

EAYMENTS (Amounts may be rounded to nearest figure in prescribed ranges)
REPORTED PAYING HIGH NOW PAST SELLING LAST

REPORTED PAYING HIGH NOW PAST SELLING LAST SALE RECORD CREDIT OWES DUE TERMS WITHIN

12/87

Ppt

750

500

-0-

N30

1 Mo

SPECIAL EVENTS 01/22/87

Subject headquarters is a subsidiary of Exide Corporation, Horsham, PA.

This is a branch: headquarters are located at 257 West Mallory, Memphis, TN. Headquarters D-U-N-S 06-769-0040. The manager has authority to make all purchases. This branch is engaged in the recovering and refining of nonferrous metals.  $03-07(082 \ /305)$ 

FULL DISPLAY COMPLETE



DUNS: 06-769-0040 TINED METALS CORP

DATE PRINTED MAR 07 1988

SUMMARY RATING 3A3

EUA 9009 MEMPHIS TN 38109 257 WEST MALLORY

LEAD SMELTING SIC NO.

STARTED 1984 PAYMENTS SEE BELOW

AND BRANCH(ES) OR DIVISION(S) MEMPHIS TN 38109

33 41

SALES \$19,000,000 WORTH F \$7,454,057 \$19,000,000 130(70 HERE) EMPLOYS

TEL: 901 775-3770

HISTORY CLEAR FINANCING SECURED CONDITION FAIR

CHIEF EXECUTIVE: RICHARD L SWAIN, PRES

PAYMENTS REPORTED		y be	rounded HIGH CREDIT	to nearest NOW OWES	figure PAST DUE	in prescribed SELLING TERMS	ranges) LAST SALE WITHIN
02/88	Ppt		5000	5000	250	N30	
	Ppt		2500	250	-0-		1 Mo
	Ppt-Slow 30		250	100	-0-	N30	1 Mo
	Slow 30		45000	30000	15000		1 Mo
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	(006)		500				
01/88	Ppt		30000	-0-	-0-		2-3 Mos
	Ppt		1000	1000	-0-		1 Mo
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	Ppt-Slow 30		10000	7500	100	N30	1 Mo
	Ppt-Slow 30		2500	1000	1000	1/2 10 N30	1 Mo
	Ppt-Slow 30		1000	1000	500		1 Mo
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	(016)		500				
	(017)		100				
	(018)		100	-0-	-0-	N30	
12/87	Ppt		5000	500	-0-	N30	1 Mo
	Ppt		750	750	-0-	N30	1 Mo
	Ppt		750	500	-0-	N30	1 Mo
	Ppt		750	100	-0-	N15	1 Mo
	Ppt		500	250	-0-	N15	1 Mo
	Ppt		250	-0-	-0-	N30	6-12 Mos
	Ppt-Slow 15		7500	-0-	-0-	N30	6-12 Mos
	Ppt-Slow 30		500	500	-0-	N30	1 Mo
	Ppt-Slow 90		2500	750	-0-	N30	1 Mo
11/87	Ppt		2500	2500	-0-		l Mo
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	Disc-Slow 20	)	2500	1000	500		l Mo
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09/87	Disc		250	250	-0-		1 Mo

37	Ppt-Slow 15 Slow 10	10000	10000	2500	N30	1 Mo
06/87	Ppt	250	-0-	-0-		6-12 Mos
	Slow 5		-0-	-0-		6-12 Mos
04/87	Slow 90	15000	15000		N30	4-5 Mos
	(041)	1000			N30	4-5 Mos
03/87	Ppt	1000	500	-0-	N30	1 Mo
02/87	Ppt	50	-0-	-0-		6-12 Mos
	Disc-Slow 30	500	-0-	-0-	1 10 N30	6-12 Mos

\* Payment experiences reflect how bills are met in relation to the terms granted. In some instances payment beyond terms can be the result of disputes over merchandise, skipped invoices etc.

\* Each experience shown represents a separate account reported by a supplier. Updated trade experiences replace those previously reported.

#### FINANCE

- \* A FINANCIAL SPREAD SHEET OF COMPARATIVES, RATIOS, AND INDUSTRY AVERAGES
- \* MAY BE AVAILABLE. ORDER A DUNS FINANCIAL PROFILE VIA YOUR DUNSPRINT
- \* TERMINAL OR BY CALLING DUNS DIAL AT 1-800-DNB-DIAL.

05/07/8	7	Interim	Fiscal	Fiscal
		Apr 30 1984	Mar 31 1985	Mar 31 1987
	Curr Assets	3,762,270	3,975,279	9,395,232
	Curr Liabs	2,223,160	1,729,340	4,314,387
	Current Ratio	1.69	2.29	2.18
	Working Capital	1,539,110	1,245,939	5,080,845
	Other Assets	2,897,170	3,120,432	3,867,656
	Worth	2,461,280	3,508,388	7,454,057

Prepared from books without audit.

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On MAY 06 1987 James Green, secretary, submitted the above figures.

He submitted the following partial estimates dated MAY 06 1987: Sales for year ended Mar 31 1987 were \$19,000,000.

He stated that sales for the fiscal year ended Mar 31 1987 were up compared to the same period last year. Operations for the period were conducted at a profit.

Complete operating figures are not provided; however, management reports a substantial sales increase in the last fiscal period with operations profitable. Due to the lack of complete operating figures, trend is undetermined.

Management declines a complete balance sheet for publication but permits its inspection and the use of the foregoing summary figures. Generally assets at Mar 31 1987 consisted of cash in moderate six figures; accounts receivable in medium seven figures; inventory in low seven figures and fixed assets in moderate seven figures. Debt consisted of accounts payable in moderate seven figures; long term debt moderate seven figures; accruals and taxes in medium-high six figures. Long term debt is an industrial revenue bond with current maturity in low 6 figures. There were no intangible assets or contingent liabilities.

Figures under review reflect working funds centered in rather slow receivables, with irregular payments reported in trade.

Management reports this to be due to major customers requiring longer



terms. Debt is somewhat large but is not considered excessive. The overall condition is regarded as fair.

#### PUBLIC FILINGS

On Dec 18 1987, a suit in the amount of \$675,000 was filed 02/18/88 against Refined Metals Corp by E Jeff Lavelle in Circuit Court (Docket #23564) in Memphis, TN.

#### UCC FILINGS

02/05/88 Financing Statement #305475 filed 11-19-87 with Secretary, State Debtor: Refined Metals Corp, Memphis, TN. Secured Party: H I Equipment Co Inc, Memphis, TN. Assigned to First Tennessee Bank NA, Memphis, TN. Collateral: leased industrial equipment/machinery and proceeds.

Financing Statement #463852 filed 08-28-87 with Secretary, State 10/29/87 Debtor: Refined Metals Corp, memphis, TN. Secured Party: of TN. Service & Equipment Co, Memphis, TN. Assigned to Dresser Finance Corp, Franklin Point, IL. Collateral: specified construction equipment/machinery.

05/07/87 Financing Statement #305475 filed 01-18-86 with Secretary, State Debtor: Refined Metals Corp, Memphis, TN. Secured Party: of TN. CHI Equip Co Inc, Memphis, TN. Assigned to First Tennessee Bank NA, Memphis, TN. Collateral: leased industrial equipment/machinery and proceeds.

05/07/87 Financing Statement #222795 filed 01-17-85 with Secretary, State of TN. Debtor: Refined Metals Corp, Memphis, TN. Secured Party: First Tennessee Bank, Memphis, TN. Collateral: specified industrial equipment/machinery including proceeds and products.

07/87 Financing Statement #1108463 filed 01-07-85 with Secretary, State of IN. Debtor: Refined Metals Corp, Indianapolis, IN. Secured Party: Lubs Equipment & Supply, Indianapolis, IN. Collateral: specified equipment.

05/07/87 Financing Statement #189124 filed 08-22-84 with Secretary, State of TN. Debtor: Refined Metals Corp, Memphis, TN. Secured Party: Case Power & Equipment, Memphis, TN. Assigned to J I Case Credit Corp, Memphis, TN. Collateral: specified machinery including proceeds and products.

05/07/87 Financing Statement #175873 filed 06-23-84 with Secretary, State of TN. Debtor: Refined Metals Corp, Memphis, TN. Secured Party: Exide Corp, Horsham, PA. Collateral: all assets including proceeds and products.

05/07/87 Financing Statement #11601928 filed 03-28-83 with Secretary, State of PA. Debtor: Refined Metals Corp, Memphis, TN. Secured Party: Congress Financial Corp, New York, NY. Collateral: specified accounts receivable, contract rights, chattel paper, inventory, equipment, fixtures, machinery, vehicle(s), industrial equipment/machinery, construction equipment/machinery, negotiable instrument, assets including proceeds and products.

05/07/87 Financing Statement #082950 filed 03-31-83 with Secretary, State Debtor: Refined Metals Corp, Memphis, TN. Secured Party: Congress Financial Corp, New York, NY. Collateral: unspecified including proceeds and products.

On Mar 31 1983 financing statement original #082954 was filed with the Secretary, State of Tennessee listing Refined Metals Corp as debtor and National Bank of Canada, Toronto, Ontario, Canada, as

07/87

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secured party. Collateral is unspecified.

On Mar 28 1983 financing statement original #11601931 was filed with the Secretary, State of Pennsylvania listing Refined Metals Corp as debtor and National Bank of Canada, Toronto, Ontario, Canada as secured party. Collateral is listed as specified accounts receivable, contract rights, chattel paper, inventory, equipment, fixtures, machinery, vehicles, industrial equipment/machinery, all assets and negotiable instruments including proceeds and products.

The public record items reported above under "PUBLIC FILINGS" and "UCC FILINGS" may have been paid, terminated, vacated or released prior to the date this report was printed.

BANKING 01/88

Account(s) averages moderate 6 figures. Account open over 3 years.

HISTORY 05/07/87

RICHARD L SWAIN, PRES

T W FREUDIGER, V PRES

JAMES GREEN, SEC

DIRECTOR(S): THE OFFICER(S)

Incorporated Delaware Jun 1 1976. Authorized capital consists of 1,000 shares common stock, \$1 par value.

Business started 1976 by Inco Electroenergy Corporation, Philadelphia, PA as a subsidiary. 80% of capital stock is owned by Swain. 20% of capital stock is owned by other officers.

Business was subsequently acquired by Exide Corporation, Horsham, PA in Feb 1982. Present control succeeded Apr 1 1984 when stock was acquired by Richard Swain and others.

RICHARD L SWAIN born 1930 married. Here since 1976. 1972-76 with M S & R Inc, Memphis, TN. 1951-72 with RSR Corporation, Dallas, TX.

JAMES GREEN born 1934 married. With this company since 1976. 1966-75 employed by Kimco Corp, Memphis, TN. 1964-65 employed by Southern Electric Co, Birmingham, AL. 1963-64 employed by Chemstrand Corp, Decatur, AL. 1962-64 employed by Armour Agricultural Chemical, Memphis, TN. 1959-62 employed by American Bridge Co, Memphis, TN.

FREUDIGER born 1938 married. With this business since 1977. RSR Corporation, Dallas, TX 1960-77.

OPERATION 05/07/87

Does lead smelting.

/24)

Sells on net 30 day terms. Has 25 accounts. Sells to wholesale plumbing supply houses and manufacturers of storage batteries, ammunition and wheel weights. Territory: Southeastern and Midwestern US. Nonseasonal.

EMPLOYEES: 130 including officers. 70 employed here.

FACILITIES: Owns 5,000 sq. ft. in one story concrete building in good condition. Premises neat.

LOCATION: Industrial section on well traveled street.

19101

BRANCHES: 3700 S Arlington, Indianapolis, IN. Operations are the same as headquarters.

R B

03-07(2D0

believe that post-closure care has not been in accordance with the approved-post-closure plan. The commissioner will provide the owner or operator a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan. (Solid Waste Management Board: 329 IAC 3-22-22; filed May 31, 1988, 2:42 pm)

# 329 IAC 3-22-23 Use of a mechanism for financial assurance of both closure and post-closure care

Authority: IC 13-7-3; IC 13-7-8.5-4 Affected: IC 13-7-8.5-5; IC 13-7-10-1; 40 CFR 265.146

Sec. 23. An owner or operator may satisfy the requirements for financial assurance for both closure and post-closure care for one (1) or more facilities by using a trust fund, surety bond, letter of credit, insurance, financial test, or corporate guarantee that meets the specifications for the mechanism in both 329 IAC 3-22-4 through 329 IAC 3-22-12 and 329 IAC 3-22-14 through 329 IAC 3-22-22. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of closure and of post-closure care. (Solid Waste Management Board: 329 IAC 3-22-23; filed May 31, 1988, 2:42 pm)

### 329 IAC 3-22-24 Liability requirements

Authority: IC 13-7-8.5-4

Affected: IC 13-7-8.5-5; IC 13-7-10-1; 40 CFR 265.147

- Sec. 24. (a) Coverage for Sudden Accidental Occurences. After July 1, 1982, an owner or operator of a hazardous waste treatment, storage, or disposal facility or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least one million dollars (\$1,000,000) per occurrence with an annual aggregate of at least two million dollars (\$2,000,000), exclusive of legal defense costs. This liability coverage may be demonstrated in one (1) of three (3) ways, as specified in subdivisions (a)(1), (a)(2) and (a)(3) of this section:
  - (1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this subdivision.
    - (A) Each insurance policy must be amended by attachment of the hazardous waste facility liability endorsement or evidenced by a certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in 329 IAC 3-22-34. The wording of the certificate of

insurance must be identical to the wording specified in 329 IAC 3-22-35. The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the commissioner. If requested by the commissioner, the owner or operator must provide a signed duplicate original of the insurance policy.

- (B) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.
- (2) An owner or operator may meet the requirements of this section by passing a financial test for liability coverage as specified in subsection (f) of this section or by using the corporate guarantee for liability coverage as specified in subsection (g) of this section.
- (3) An owner or operator may demonstrate the required liability coverage through use of the financial test insurance, the corporate guarantee, a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance. The amounts of coverage demonstrated must total at least the minimum amounts required by subsection (a) of this section.
- (b) Coverage for Nonsudden Accidental Occurence. An owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least three million dollars (\$3,000,000) per occurrence with an annual aggregate of at least six million dollars (\$6,000,000), exclusive of legal defense costs. This liability coverage may be demonstrated in one (1) of three (3) ways, as specified in subdivisions (b)(1), (b)(2) and (b)(3) of this section:
  - (1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in subdivision (b)(1) of this section.
    - (A) Each insurance policy must be amended by attachment of the hazardous waste facility liability endorsement or evidenced by a certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in 329 IAC 3-22-35. The wording of the certificate of insurance must be identical to the wording specified in 329 IAC 3-22-36. The owner or operator must submit a signed duplicate original of the

endorsement or the certificate of insurance to the commissioner. If requested by the commissioner, the owner or operator must provide a signed duplicate original of the insurance policy.

- (B) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.
- (2) An owner or operator may meet the requirements of this section by passing a financial test for liability coverage as specified in subsection (f) of this section or by using the corporate guarantee for liability coverage as specified in subsection (g) of this section.
- (3) An owner or operator may demonstrate the required liability coverage through use of the financial test, insurance, the corporate guarantee, a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance. The amounts of coverage demonstrated must total at least the minimum amounts required by subsection (b) of this section.
- (4) The required liability coverage for nonsudden accidental occurrences must be demonstrated by the dates listed below. The total sales or revenues of the owner or operator in all lines of business, in the fiscal year preceding July 15, 1982, will determine which of the dates applies. If the owner and operator of a facility are two (2) different parties, or if there is more than one (1) owner or operator, the sales or revenues of the party with the largest sales or revenues will determine the date by which the coverage must be demonstrated. The dates are as follows:
  - (A) For an owner or operator with sales or revenues totaling ten million (\$10,000,000) dollars or more, January 16, 1983.
  - (B) For an owner or operator with sales or revenues greater than five million dollars (\$5,000,000) but less than ten million dollars (\$10,000,000), January 16, 1984.
  - (C) All other owners or operators, January 16, 1985.
- (5) An owner or operator who is in either of the last two (2) categories (clauses (b)(4)(A) or (b)(4)(B) of this section) must, unless he has demonstrated liability coverage for nonsudden accidental occurrences, send a letter to the commissioner stating the date by which he plans to establish such coverage.
- (c) Request for Exemption. If an owner or operator can demonstrate to the satisfaction of the commissioner that the levels of financial responsibility required by subsections (a) or (b) of this section are not consistent with the degree and duration of risk associated with

treatment, storage, or disposal at the facility or grouof facilities, the owner or operator may obtain a variance from the commissioner. The request for a variance must be submitted in writing to the commissioner. If granted, the exemption will take the form of an adjusted level of required liability coverage, such level to be based on the commissioner's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The commissioner may require an owner or operator who requests a exemption to provide such technical and engineering information as is deemed necessary by the commissioner to determine a level of financial responsibility other than that required by subsections (a) or (b) of this section. The commissioner will process a variance request as if it were a permit modification request under 329 IAC 3-36-2 and subject to the procedures of 329 IAC 3-39-3. Notwithstanding any other provision, the commissioner may hold a public hearing at his discretion or whenever he finds, on the basis of requests for a public hearing, a significant degree of public interest in a decision to grant a exemption.

(d) Adjustments by the commissioner. If the commissioner determines that the levels of financial responsibility required by subsections (a) or (b) of this sectio are not consistent with the degree and duration of ris. associated with treatment, storage, or disposal at the facility or group of facilities, the commissioner may adjust the level of financial responsibility required under subsections (a) or (b) of this section as may be necessary to protect human health and the environment. This adjusted level will be based on the commissioner's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the commissioner determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, he may require that an owner or operator of the facility comply with subsection (b) of this section. An owner or operator must furnish to the commissioner, within a reasonable time, any information which the commissioner requests to determine whether cause exists for such adjustments of level or type of coverage. The commissioner will process an adjustment of the level of required coverage as if it were a permit modification under 329 IAC 3-36-2 subject to the procedures of 329 IAC 3-39-3. Notwithstanding any other provision, the commissioner may hold a publihearing at his discretion or whenever he finds, on the basis of requests for a public hearing, a significant degree of public interest in a decision to adjust the level or type of required coverage.



- (e) Period of Coverage. Within sixty (60) days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the commissioner will notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage for that facility, unless the commissioner has reason to believe that closure has not been in accordance with the approved closure plan.
  - (f) Financial Test for Liability Coverage.
  - (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes this financial test. To pass this test, the owner or operator must meet the criteria of clause (f)(1)A or (f)(1)(B):
    - (A) The owner or operator must have:
      - (i) net working capital and tangible net worth each at least six (6) times the amount of liability coverage to be demonstrated by this test; and
      - (ii) tangible net worth of at least ten million dollars (\$10,000,000); and
      - (iii) assets in the United States amounting to either:
      - (AA) at least ninety percent (90%) of his total assets: or
      - (BB) at least six (6) times the amount of liability coverage to be demonstrated by this test.
    - (B) The owner or operator must have:
      - (i) a current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and
      - (ii) tangible net worth of at least ten million dollars (\$10,000,000); and
      - (iii) tangible net worth of at least six (6) times the amount of liability coverage to be demonstrated by this test: and
      - (iv) assets in the United States amounting to either:
      - (AA) at least ninety percent (90%) of his total assets; or
      - (BB) at least six (6) times the amount of liability coverage to be demonstrated by this test.
  - (2) The phrase "amount of liability coverage" as used in this subsection refers to the annual aggregate amounts for which coverage is required under subsections (a) and (b) of this section.
  - (3) To demonstrate that he meets this test, the owner or operator must submit the following to the commissioner:
    - (A) A letter signed by the owner's or operator's chief financial officer and worded as specified in 329 IAC 3-22-32. If an owner or operator is using the financial test to demonstrate both assurance

- for closure or post-closure care, as specified by 329 IAC 3-22-9 and 329 IAC 3-22-19, and liability coverage, he must submit the letter specified in 329 IAC 3-22-32 to cover both forms of financial responsibility; a separate letter as specified in 329 IAC 3-22-31 is not required.
- (B) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.
- (C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:
  - (i) he has compared the data which the letter from the chief financial officer specified as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and
  - (ii) in connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.
- (4) After the initial submission of items specified in subdivision (f)(3) of this section, the owner or operator must send updated information to the commissioner within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in subdivision (f)(3) of this section.
- (5) If the owner or operator no longer meets the requirements of subdivision (f)(1) of this section, he must obtain insurance for the entire amount of required liability coverage as specified in this section. Evidence of insurance must be submitted to the commissioner within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.
- (6) The commissioner may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The commissioner will evaluate other qualifications on an individual basis. The owner or operator must provide evidence of insurance for the entire amount of required liability coverage as specified in this section within thirty (30) days after notification of disallowance.
- (g) Corporate guarantee for liability coverage.
- (1) Subject to subdivision (2) below, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter

referred to as a "corporate guarantee." The guarantor must be the parent corporation of the owner or operator. The guarantor must meet the requirements for owners or operators in subdivisions (f)(1) through (f)(7) of this section. The wording of the corporate guarantee must be identical to the wording specified in 329 IAC 3-22-34. A certified copy of the corporate guarantee must accompany the items sent to the commissioner as specified in subdivision (f)(3) of this section. The terms of the corporate guarantee must provide that:

(A) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

(B) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the commissioner. This guarantee may not be terminated unless and until the commissioner approves alternate liability coverage complying with 329 IAC 3-47-8 and/or this section.

(2) A corporate guarantee may be used to satisfy the requirements of this section only if the Attorney General(s) or insurance commissioner(s) of the state in which the guarantor is incorporated, unless that state is Indiana, has (have) submitted a written statement to the commissioner that a corporate guarantee executed as described in this section and 329 IAC 3-22-34 is a legally valid and enforceable obligation in that state.

(Solid Waste Management Board; 329 IAC 3-22-24; filed May 31, 1988, 2:42 pm)

# 329 IAC 3-22-25 Incapacity of owners, operators, guarantors, or financial institutions

Authority: IC 13-7-3; IC 13-7-8.5-4

Affected: IC 13-7-8.5-5; IC 13-7-10-1; 40 CFR 265.148

Sec. 25. (a) An owner or operator must notify the commissioner by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy). U.S. Code, naming the owner or operator as debtor, within ten (10) days after commencement of the proceeding. A guarantor of corporate guarantee as specified in 329 IAC 3-22-9 and 329 IAC 3-22-19 must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee (329 IAC 3-22-33).

(b) An owner or operator who fulfills the require ments of 329 IAC 3-22-4 through 329 IAC 3-22-12, 329 IAC 3-22-14, 329 IAC 3-22-23, or 329 IAC 3-22-24 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within sixty (60) days after such an event. (Solid Waste Management Board; 329 IAC 329 IAC 3-22-25; filed May 31, 1988, 2:42 pm)

# 329 IAC 3-22-26 Wording of the instruments: trust agreement

Authority: IC 13-7-3; IC 13-7-8.5-4

Affected: IC 13-7-8.5-5; IC 13-7-10-1; 40 CFR 264.151(a)

Sec. 26. (a) A trust agreement for a trust fund, as specified in 329 IAC 3-22-5 or 329 IAC 3-22-15, 329 IAC 3-47-4(a) or 329 IAC 3-47-6(a) (see 329 IAC 3-47-10(a)) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

### Trust Agreement

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the state of \_\_\_\_\_\_," or "a national bank"], the "Trustee."

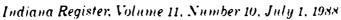
Whereas, the Indiana Department of Environmental Management, "DEM", an agency of the State of Indiana, has established certain rules applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to ac as trustee.

Now, Therefore, the Grantor and the Trustee agree as follows:





Section 1. Definitions. As used in this Agreement:

- (a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A. for each facility list the EPA Identification Number, name, address, and the current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by the Agreement.]

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund." for the benefit of the DEM. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the DEM.

Section 4. Payment for Closure and Post-Closure Care. The Trustee shall make payments from the Fund as the DEM commissioner shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the DEM commissioner from the Fund for closure and post-closure expenditures in such amounts as the DEM commissioner shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the DEM commissioner specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without

distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government:
- (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and
- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition [sic.];

- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted:
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in any other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interestbearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least thirty (30) days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the DEM commissioner a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than sixty (60) days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within ninety (90) days after the statement has been furnished to the Grantor and the DEM commissioner shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to timeconsult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the DEM commissioner, and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the DEM commissioner to the Trustee shall be in writing, signed by the DEM commissioner, or his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or DEM hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or DEM, except as provided for herein.



Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the DEM commissioner, by certified mail within ten (10) days following the expiration of the thirty-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the DEM commissioner, or by the Trustee and the DEM commissioner if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the DEM commissioner, or by the Trustee and the DEM commissioner, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the DEM commissioner issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Indiana.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be herento affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in

329 IAC 3-22-26 as such rules were constituted on the date first above written.

[Signature of Grantor]
[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

(Note: Corporate seal is not required by Indiana law)

(b) Form of certification of acknowledgement. The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in 329 IAC 3-22-5 or 329 IAC 3-22-15 and 329 IAC 3-47-4(a) or 329 IAC 3-47-6(a).

Form of certification of acknowledgement.

State of _	 	 	············
County of			

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument: that she/he knows the seal of said corporation: that the seal affixed to such instrument is such corporate seal: that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(Signature of Notary Public)

(c) Indiana form of acknowledgement (Trust agreements notarized in Indiana must use this form of acknowledgement):

Form of Indiana certificate of acknowledgement.

#### ACKNOWLEDGEMENT

State of	)	
	)	SS
County of	)	

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared [owner or operator] to be known by me to be the person who [(only for corporate party], as [insert title] of \_\_\_\_\_\_\_, Inc., the corporation which] executed the foregoing instrument, signed the same and acknowledged to me that he/she did so sign the same [in the name and on behalf of the said corporation as such officer], and that the same is his free act and deed [and

the free corporate act and deed of said corporation, and that he she was duly authorized by the Board of Directors of said corporation] and that the statements made in the foregoing instrument are true.

IN WITNESS WHEREOF, I hofficial seal this day	have set my hand and of
I am a resident of	
County,	<del></del> -
Notary Public	
My Commission Expires:	

(Solid Waste Management Board; 329 IAC 3-22-26; filed May 31, 1988, 2:42 pm)

# 329 IAC 3-22-27 Wording of instrument: surety bonds

Authority: IC 13-7-8.5-4

Affected: IC 13-7-8.5-5; IC 13-7-10-1; 40 CFR 264.151(b)

Sec. 27. A surety bond guaranteeing payment into a trust fund, as specified in 329 IAC 3-22-6 or 329 IAC 3-22-16, 329 IAC 3-47-4(b) or 329 IAC 3-47-6(b) (see 329 IAC 3-47-10(b)) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### Financial Guarantee Bond

Date	bond executed:
Effec	tive date:
Princi or opera	pal: [legal name and business address of owner ator]
	of organization: [insert "individual," "joint ven- partnership," or "corporation"]
State	of incorporation:
Suret	y(ies): [name(s) and business address(es)]

EPA Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]:

Total penal sum of bond:\_\_\_\_\_\_\_
Surety's bond number:\_\_\_\_\_

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Indiana Department of Environmental Management in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, suc-

cessors, and assigns jointly and severally; provide that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under IC 13-7 and 329 IAC 3, to have a permit or interim status in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit or interim status, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identifie above, fund the standby trust fund in the amount() identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within fifteen (15) days after a final order to begin closure is issued by the Indiana Department of Environmental Management or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in 329 IAC 3-22, as applicable, and obtain the Commissioner's written approval of such assurance, within ninety (90) days after the date notice of cancellation is received by both the Principal and the Commissioner from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Commissioner that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Commissioner.

The liability of the Surety(ies) shall not be discharge by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond.



but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Commissioner, provided, however, that cancellation shall not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the Principal and the Commissioner, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Commissioner.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Commissioner.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 329 IAC 3-22-27 as such rules were constituted on the date this bond was executed.

#### Principal

[Signature(s)] [Name(s)] [Title(s)] [Corporate seal]

Corporate Suretv(ies)

[Name and address] State of incorporation:
Liability limit:
[Signature(s)] [Name(s) and title(s)] [Corporate seal] [For every co-surety, provide signature(s) and other information in the same manner as for Surety above. Bond premium:
5

(Note: Corporate seal not required by Indiana law)

(Solid Waste Management Board; 329 IAC 3-22-27; filed May 31, 1988, 2:42 pm)

# 329 IAC 3-22-28 Wording of instrument: performance bonds

Authority: IC 13-7-3; IC 13-7-8.5-4

Affected: IC 13-7-8.5-5; IC 13-7-10-1; 40 CFR 264.151(c)

Sec. 28. (a) A surety bond guaranteeing performance of closure and/or post-closure care, as specified in 329 IAC 3-47-4(c) or 329 IAC 3-47-6(c) (see 329 IAC 3-47-10(c)), must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### Performance Bond

Date bond executed:
Effective date:
Principal: [legal name and business address of owner or operator]
Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation:
Surety(ies): [name(s) and business address(es)]:
EPA Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]:
Total penal sum of bond: \$
Surety's bond number:

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Department of Environmental Management of the State of Indiana (hereinafter called DEM), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we. the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Indiana Environmental Management Act (IC 13-7), to have a permit in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit, and

Whereas said Prinicipal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now. Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.

And, if the Principal shall faithfully perform postclosure care of each facility for which this bond guarantees post-closure care, in accordance with the postclosure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.

Or, if the Principal shall provide alternate financial assurance as specified in 329 IAC 3-47, and obtain the DEM commissioner's written approval of such assurance, within ninety (90) days after the date notice of cancellation is received by both the Prinicipal and the DEM commissioner from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the DEM commissioner that the Principal has been found in violation of the closure requirements of 329 IAC 3-40 through 329 IAC 3-54, for a facility for which this bond guarantees performance of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the DEM commissioner.

Upon notification by the DEM commissioner that the Principal has been found in violation of the post-closure requirements of 329 IAC 3-40 through 329 IAC 3-54 for a facility for which this bond guarantees performance of post-closure care, the Surety(ies) shall either perform post-closure care in accordance with the post-closure plan and other permit requirements or place the postclosure amount guaranteed for the facility into the standby trust fund as directed by the DEM commissioner.

Upon notification by the DEM commissioner that the Principal has failed to provide alternate financial assurance as specified in 329 IAC 3-47, and obtain written approval of such assurance from the DEM commissioner during the ninety (90) days following receipt by both the Principal and the DEM commissioner of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the DEM commissioner.

The Surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws. statutes, rules, and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the DEM commissioner, provided, however, that cancellation shall not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the Principal and the DEM commissioner, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies) provided, however. that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the DEM commissioner.

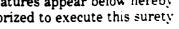
[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than twenty percent (20%) in any one (1) year, and no decrease in the penal sum takes place without the written permission of the DEM commissioner.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety





bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 329 IAC 3-22-28 as such rule was constituted on the date this bond was executed.

### Principal

[Signature(s)] [Name(s)] [Title(s)] [Corporate seal]

Corporate Surety(ies)

[Name and address]
State of incorporation:
Liability limit: \$
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]:
[For every co-surety, provide signature(s), corporate
seal, and other information in the same manner as for
Surety above.]
Bond premium: \$
•

(Note: Corporate seal not required by Indiana law) (Solid Waste Management Board; 329 IAC 3-22-28; filed May 31, 1988, 2:42 pm)

### 329 IAC 3-22-29 Wording of instrument: letter of credit

Authority: IC 13-7-3; IC 13-7-7; IC 13-7-8.5-4 Affected: IC 13-7-8.5; IC 26-1-5; 40 CFR 264.151(d)

Sec. 29. A letter of credit, as specified in 329 IAC 3-22-7 or 329 IAC 3-22-17, 329 IAC 3-47-4(d) or 329 IAC 3-47-6(d) (see 329 IAC 3-47-10(d)) must be worded as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

Technical Secretary
Environmental Management Board
State of Indiana

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars \$\_\_\_\_\_, available upon presentation of

- (1) your sight draft, bearing reference to this letter of credit No. \_\_\_\_\_, and
- (2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Indiana Environmental Management Act (IC 13-7) as amended."

This letter of credit is effective as of [date] and shall expire on [date at least one (1) year later], but such expiration date shall be automatically extended for a period of [at least one (1) year] on [date] and on each successive expiration date, unless, at least one hundred twenty (120) days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for one hundred twenty (120) days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this Letter of Credit is identical to the wording specified in 329 IAC 3-22-29 as such rule was constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution] [Date]

This credit is subject to Article 5 of the Uniform Commercial Code as adopted in IC 26-1-5-101 through IC 26-1-5-117. (Solid Waste Management Board: 329 IAC 3-22-29; filed May 31, 1988, 2:42 pm)

### 329 IAC 3-22-30 Wording of instrument: certificate of insurance

Authority: IC 13-7-3; IC 13-7-7; IC 13-7-8.5-4 Affected: IC 13-7-8.5; 40 CFR 264.151(e)

Sec. 30. A certificate of insurance, as specified in 329 IAC 3-22-8 or 329 IAC 3-22-18, 329 IAC 3-47-4(e) or 329 IAC 3-47-6(e) (see 329 IAC 3-47-10(e)) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certificate of Insurance for Closure of Post-Closure Care

Name and "Insurer"):				called	the
Name and "Insured"):	of	Insured	(herein	called	the

Facilities Covered: [List for each facility: The EPA Identification Number, name, address, and the amount of insurance for closure and/or the amount for post-

closure care (these amounts for all facilities covered must total the face amount shown below).

Face Amount:	
Policy Number:	
Effective Date:	

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure" or "closure and post-closure care" or "post-closure care" for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 329 IAC 3-22-8 and 329 IAC 3-22-18, 329 IAC 3-47-4(e) or 329 IAC 3-47-6(e) (see 329 IAC 3-47-10(e)) as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the DEM commissioner, the Insurer agrees to furnish to the DEM commissioner a duplicate original of the policy listed above including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 329 IAC 3-22-30 as such rule was constituted on the date shown immediately below.

[Authorized signature for Insurer]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:
[Date]

(Solid Waste Management Board; 329 IAC 3-22-30; filed May 31, 1988, 2:42 pm)

# 329 IAC 3-22-31 Wording of instrument: chief financial officer letter for closure and/or post-closure

Authority: IC 13-7-7; IC 13-7-8.5-4 Affected: IC 13-7-8.5; 40 CFR 264.151(f)

Sec. 31. A letter from the chief financial officer, as specified in 329 IAC 3-22-9 or 329 IAC 3-22-19, or 329 IAC 3-47-4(f) or 329 IAC 3-47-6(f) (see 329 IAC 3-47-10(f)) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

### Letter From Chief Financial Officer

[Address to commissioner of the Department of Environmental Management]

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the

financial test to demonstrate financial assurance, as specified in 329 IAC 3-22 or 329 IAC 3-47.

[Fill out the following four paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

- 1. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in 329 IAC 3-22 or 329 IAC 3-47. The current closure and or post-closure cost estimates covered by the test are shown for each facility:
- 2. This firm guarantees, through the corporate guarantee specified in 329 IAC 3-22, or 329 IAC 3-47 the closure or post-closure care of the following facilities owned or operated by subsidiaries of this firm. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility:
- 3. This firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test specified in 329 IAC 3-22 or 329 IAC 3-47. The current closure and or post-closure cost estimates covered by such a test are shown for each facility:
- 4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a state through the financial test or any other financial assurance mechanism specified in Subpart H of 40 CFR Parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].



[Fill in Alternative I if the criteria of 329 IAC 3-47-4(f)(1)(i) or 329 IAC 3-47-6(f)(1)(i) or of 329 IAC 3-22-9(a)(1) or 329 IAC 3-22-19(a)(1) are used. Fill in IAC 3-22-19(a)(2) are used.]

Alternative II if the criteria of 329 IAC 3-47-4(f)(1)(ii) or 329 IAC 3-47-6(f)(1)(ii) or of 329 IAC 3-22-9(a)(2) or 329

	Alternative I	
1.	Sum of current closure and post-closure cost estimates [total of all cost estimates shown in the four paragraphs above]	\$
*2.	Total liabilities (if any portion of the closure or post-closure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4]	
*3.	Tangible net worth	• • • • • • • • • • • • • • • • • • • •
*4.	Net worth	
<b>*</b> 5.	Current assets	• • • • • • • • • • • • • • • • • • • •
<b>*</b> 6.	Current liabilities	
7.	Net working capital [line 5 minus line 6]	
*8.	The sum of net income plus depreciation, depletion, and amortization	
<b>*</b> 9.	Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.)	
	YE	S NO
10.	Is line 3 at least \$10 million?	• • • • • • • • • • • • • • • • • • • •
11.	Is line 3 at least 6 times line 1?	• • • • • • • • • • • • • • • • • • • •
12.	Is line 7 at least 6 times line 1?	• • • • • • • • • • • • • • • • • • • •
13.	Are at least 90% of firm's assets located in the U.S.? If not, complete line $14.\ldots$	
14.	Is line 9 at least 6 times line 1?	• • • • • • • • • • • • • • • • • • • •
15.	Is line 2 divided by line 4 less than 2.0?	
16.	Is line 8 divided by line 2 greater than 0.1?	
17.	Is line 5 divided by line 6 greater than 1.5?	
	Alternative II	
1.	Sum of current closure and post-closure cost estimates [total of all cost estimates shown in the four paragraphs above]	\$
2.	Current bond rating of most recent issuance of this firm and name of rating service	
3.	Date of issuance of bond	
4.	Date of maturity of bond	
*5.	Tangible net worth (if any portion of the closure and post-closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line)	<b>\$</b>
<b>*</b> 6.	Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.)	<b>\$</b>

	YES	NO.
-	Is line 5 at least \$10 million?	
<b>5.</b>	Is line 5 at least 6 times line 1?	
·9.	Are at least 90% of firm's assets located in the U.S.? If not, complete line 10	
10.	Is line 6 at least 6 times line 1?	•

I hereby certify that the wording of this letter is identical to the wording specified in 329 IAC 3-22-31 as such rule was constituted on the date shown immediately below.

[Signature] [Name]

[Title]
[Date]

(Solid Waste Management Board: 329 IAC 3-22-31; filed May 31, 1988, 2:42 pm)

# 329 IAC 3-22-32 Wording of instrument: chief financial officer letter; liability coverage

Authority: IC 13-7-7; IC 13-7-8.5-4 Affected: IC 13-7-8.5; 40 CFR 264.151(g)

Sec. 32. A letter from the chief financial officer, as specified in 329 IAC 3-22-24, or 329 IAC 3-47-8(f) (see 329 IAC 3-47-10(g)) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter from Chief Financial Officer (to demonstrate liability coverage or to demonstrate both liability coverage and assurance of closure or post-closure care).

[Address to commissioner of the Indiana Department of Environmental Management, State of Indiana]

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or post-closure care" if applicable] as specified in 329 IAC 3-22 and 329 IAC 3-47.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, and address.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in 329 IAC 3-22 and 329 IAC 3-47:

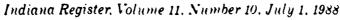
The firm identified above guarantees, through the corporate guarantee specified in 329 IAC 3-22 and 329

IAC 3-47, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following subsidiaries of the firm:

[If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following four paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

- 1. The firm identified above owns or operates the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in 329 IAC 3-22 and 329 IAC 3-47. The current closure and or post-closure cost estimates covered by the test are shown for each facility:
- 2. The owner or operator identified above guarantees, through the corporate guarantee specified in 329 IAC 3-22 and 329 IAC 3-47, the closure and post-closure care of the following facilities owned or operated by its subsidiaries. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility:
- 3. This firm, as owner and operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test specified in 329 IAC 3-22 or 329 IAC 3-47. The current closure and or post-closure cost estimates covered by such a test are shown for each facility:





The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a state through the financial test or any other financial assurance mechanisms specified in Subpart H of 40 CFR Parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and or post-closure cost estimates not covered by such financial assurance are shown for each facility: \_

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk (\*) are derived from this firm's independently audited. year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage ONLY for the liability requirements. l

### Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of 329 IAC 3-47-8(f)(1)(A) or 329 IAC 3-22-24(f)(1)(A) are used. Fill in Alternative II if the criteria of 329 IAC 3-47-8(f)(1)(B) or 329 IAC 3-22-24(f)(1)(B) are used.

	Alternative 1	
1.	Amount of annual aggregate liability coverage to be demonstrated	<b>\$</b>
*2.	Current assets	<b>\$</b>
*3.	Current liabilities	<b>\$</b> .
4.	Net working capital (line 2 minus line 3)	<b>\$</b>
*5.	Tangible net worth	<b>\$</b>
*6.	If less than 90% of assets are located in the U.S., give total U.S. assets	<b>\$</b>
		ES NO
7.	Is line 5 at least \$10 million?	•••••••
8.	Is line 4 at least 6 times line 1?	
9.	Is line 5 at least 6 times line 1?	
*10.	Are at least 90% of assets located in the U.S.? If not, complete line 11	
11.	Is line 6 at least 6 times line 1?	
•	Alternative II	
1.	Amount of annual aggregate liability coverage to be demonstrated	\$
2.	Current bond rating of most recent issuance and name of rating service	••••••
3.	Date of issuance of bond	
4.	Date of maturity of bond	
<b>*</b> 5.	Tangible net worth	\$
<b>*</b> 6.	Total assets in U.S. (required only if less than 90% of assets are located in the U.S.)	e

Alternative I

	•							٠	•	
C	l٥		Œ	R	Ł	a	n	t	r	
	ιe	ш	v	п	1	a	п	1	•	

	Y1	ES	No
7.	Is line 5 at least \$10 million?		
8.	Is line 5 at least 6 times line 1?		
*9.	Are at least 90% of assets located in the U.S.?  If not, complete line 10		
10.	Is line 6 at least 6 times line 1?		
demo	ll in Part B if you are using the financial test to instrate assurance of both liability coverage AND re and or post-closure care.]		
Part Cove	B. Closure or Post-Closure Care and Liability rage		,
3-47- 3-47- IAC 3 Fill 3-47- 3-47-	ill in Alternative I if the criteria of 329 IAC 4(f)(1)(A) or 329 IAC 3-47-6(f)(1)(A) and 329 IAC 8(f)(1)(A) are used or if 329 IAC 3-22-9(a)(1) or 329 3-22-19(a)(1) and 329 IAC 3-22-24(f)(1)(A) are used. in Alternative II if the criteria of 329 IAC 4(f)(1)(B) or 329 IAC 3-47-6(f)(1)(B) and 329 IAC 8(f)(1)(B) are used or if 329 IAC 3-22-9(a)(2) or 329 3-22-19(a)(2) and 329 IAC 3-22-24(f)(1)(B) are		
	Alternative I		
1.	Sum of current closure and post-closure cost estimates (total of all cost estimates listed above)	<b>\$</b>	
a	Amount of annual aggregate liability coverage to be demonstrated	\$ \$	
2. 3.	Sum of lines 1 and 2	\$	
*4.	Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6)	\$	
<b>*</b> 5.	Tangible net worth	\$	
*6.	Net worth	\$	
*7.	Current assets	\$	
*8.	Current liabilities	\$	
9.	Net working capital (line 7 minus line 8)	\$	
*10.	The sum of net income plus depreciation, depletion, and amortization	\$	
*11.	Total assets in U.S. (required only if less than 90% of assets located in the U.S.)	\$	
	Y	ES	NO
12.	Is line 5 at least \$10 million?		
13.	Is line 5 at least 6 times line 3?		
14.	Is line 9 at least 6 times line 3	• • • • • • • • • • •	
*15.	Are at least 90% of assets located in the U.S.?  If not, complete line 16.		

	Final R	ulas ——	_
•	Final N	ules ——	····
17.	Is line 4 divided by line 6 less than 2.0?		
18.	Is line 10 divided by line 4 greater than 0.1?		
19.	Is line 7 divided by line 8 greater than 1.5?	• • • • • • • • • • • • • • • •	
	Alternative II		
1.	Sum or current closure and post-closure cost estimates (total of all cost estimates		
	listed above)	\$	
2.	Amount of annual aggregate liability coverage to be demonstrated	\$	
3.	Sum of lines 1 and 2	\$	
4.	Current bond rating of most recent issuance and name of rating service		
5.	Date of issuance of bond		
6.	Date of maturity of bond		
*7.	Tangible net worth (if any portion of the closure or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line)	\$	
*8.	Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.)	\$	•••••
	<u>Y</u> 1	ES	N0
9.	Is line 7 at least \$10 million?	<i>.</i>	• • • • • • • • •
10.	Is line 7 at least 6 times line 3?	<i>.</i>	
*11.	Are at least 90% of assets located in the U.S.? If not, complete line 12	• • • • • • • • • • • • •	
12.	Is line 8 at least 6 times line 3?	<i></i>	
I h	ereby certify that the wording of this letter is identical to the wording specified in a was constituted on the date shown immediately below.	329 IAC 3-22-	32 as such
[N	ignature] ame] itle] ate]		
(Soli	d Waste Management Board; 329 IAC 3-22-32; filed May 31, 1988, 2:42 pm)		

329 IAC 3-22-33 Wording of instrument: corporate

guarantee for closure or postclosure care

Authority: IC 13-7-3; IC 13-7-7; IC 13-7-8.5-4 Affected: IC 13-7-8.5; 40 CFR 265.151(h)(1)

Sec. 33. A corporate guarantee, as specified in 329 IAC 3-22-9 or 329 IAC 3-22-19 or 329 IAC 3-47-4(f) or 329 IAC 3-47-6(f) (see 329 IAC 3-47-10(h)), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Corporate Guarantee for Closure or Post-Closure Care

Guarantee made this [date] by [name of guaranteeing

entity], a business corporation organized under the laws of the State of [insert state's name], herein referred to as guarantor, to the Department of Environmental Management of the State of Indiana (DEM), obligee, on behalf of our subsidiary [owner or operator] of [business address].

### Recitals

- 1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 329 IAC 3-22-9 and 329 IAC 3-22-19 or 329 IAC 3-47-4 and 320 IAC 4.1-47-6.
- 2. [Owner or operator] owns or operates the follow-

ing hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, or both.]

- 3. "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by 329 IAC 3-21 and 329 IAC 3-46 for the closure and post-closure care of facilities as identified above.
- 4. For value received from [owner or operator], guarantor guarantees to DEM that in the event that [owner or operator] fails to perform [insert "closure," "post-closure care" or "closure and post-closure care"] of the above facility(ies) in accordance with the closure or post-closure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 329 IAC 3-22 and 329 IAC 3-47, as applicable, in the name of [owner or operator] in the amount of the current closure or post-closure cost estimates as specified in 329 IAC 3-22 and 329 IAC 3-47.
- 5. Guarantor agrees that if. at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within ninety (90) days, by certified mail, notice to the DEM commissioner and to [owner or operator] that he intends to provide alternate financial assurance as specified in 329 IAC 3-22 and 329 IAC 3-47, as applicable, in the name of [owner or operator]. Within one hundred twenty (120) days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.
- 6. The guarantor agrees to notify the DEM commissioner by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within ten (10) days after commencement of the proceeding.
- 7. Guarantor agrees that within thirty (30) days after being notified by the DEM commissioner of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in 329 IAC 3-22 and 329 IAC 3-47, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

- 8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to 329 IAC 3-22-15 through 329 IAC 3-32 or 329 IAC 3-40 through 329 IAC 3-54.
- 9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial assurance requirements of 329 IAC 3-22 and 329 IAC 3-47 for the above-listed facilities, except that guarantor may cancel this guarantee by sending notice by certified mail to the DEM commissioner and to [owner or operator], such cancellation to become effective no earlier than one hundred twenty (120) days after receipt of such notice by both the DEM and [owner or operator], as evidenced by the return receipts.
- 10. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in 329 IAC 3-22 and 329 IAC 3-47. as applicable, and obtain written approval of such assurance from the DEM commissioner within ninety (90) days after a notice of cancellation by the guarantor is received by the DEM commissioner from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].
- 11. Guarantor expressly waives notice of acceptance of this guarantee by the DEM or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 329 IAC 3-22-33 as such rule was constituted on the date first above written.

filed May 31, 1988, 2:42 pm)



329 IAC 3-22-34 Wording of instrument; corporate guarantee for liability coverage

Authority: IC 13-7-7; IC 13-7-8.5

Affected: IC 13-7-8.5-5; IC 13-7-10-1; 40 CFR 264.151(i)

Sec. 34. The Guarantee shall be worded as follows:

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor, on behalf of our subsidiary [owner or operator] of [business address], to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

### Recitals

- 1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 329 IAC 3-47-8(g) and 329 IAC 3-22-24(g).
- 2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA identification number, name, and address.] This corporate guarantee satisfies third-party liability requirements for hazardous waste under IC 13-7 for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for [insert dollar amount] of coverage.
- 3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden accidental occurrences. arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.
- 4. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within ninety (90) days, by

certified mail, notice to the commissioner and to [owner or operator] that he intends to provide alternate liability coverage as specified in 329 IAC 3-47-8 and 329 IAC 3-22-24, as applicable, in the name of [owner or operator]. Within one hundred twenty (120) days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

- 5. The guarantor agrees to notify the commissioner by certified mail of a voluntary or involuntary proceedings under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within ten (10) days after commencement of the proceeding.
- 6. Guarantor agrees that within thirty (30) days after being notified by the commissioner of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in 329 IAC 3-47-8 or 329 IAC 3-22-24, in the name of [owner or operator], unless [owner or operator] has done so.
- 7. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by 329 IAC 3-47-8 and 329 IAC 3-22-24, provided that such modification shall become effective only if the commissioner does not disapprove the modification within thirty (30) days of receipt of notification of the modification.
- 8. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of 329 IAC 3-47-8 and 329 IAC 3-22-24 for the above-listed facility(ies), except as provided in paragraph 9 of this agreement.
- 9. Guarantor may terminate this guarantee by sending notice by certified mail to the commissioner and to [owner or operator], provided that this guarantee may not be terminated unless and until [owner or operator] obtains, and the commissioner approves, alternate liability coverage complying with 329 IAC 3-47-8 and/or 329 IAC 3-22-24.
- 10. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

I hereby certify that the wording of this guarantee is identical to the wording specified in 329 IAC 3-22-34.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(Solid Waste Management Board; 329 IAC 3-22-34; filed May 31, 1988, 2:42 pm)

## 329 IAC 3-22-35 Wording of instrument: hazardous waste facility liability endorsement form

Authority: IC 13-7-3; IC 13-7-7; IC 13-7-8.5-4 Affected: IC 13-7-8.5; 40 CFR 264.151(i)

Sec. 35. A hazardous waste facility liability endorsement as required in 329 IAC 3-22-24 or 329 IAC 3-47-8 (see 329 IAC 3-47-10(i)) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

### Hazardous Waste Facility Liability Endorsement

- This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under 329 IAC 3-22-24 or 329 IAC 3-47-8. The coverage applies at [list EPA Identification Number, name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences." or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs.
- 2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):
  - (a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.
    (b) The Insurer is liable for the payment of amounts within any deductible applicable to the

policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in 329 IAC 3-22-24 or 329 IAC 3-47-8.

- (c) Whenever requested by the commissioner of the Department of Environmental Management (DEM), the Insurer agrees to furnish to the commissioner a signed duplicate original of the policy and all endorsements.
- (d) Cancellation of this endorsement, whether by the Insurer or the insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the commissioner.
- (e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the commissioner.

Attached to and forming part of policy No. \_\_\_\_ issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_ The effective date of said policy is \_\_\_\_ day of \_\_\_\_\_\_, 19\_\_\_

I hereby certify that the wording of this endorsement is identical to the wording specified in 329 IAC 3-22-34 as such rule was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of Authorized Representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of Representative]

(Solid Waste Management Board; 329 IAC 3-22-35; filed May 31, 1988, 2:42 pm)

329 IAC 3-22-36 Wording of instrument: hazardous waste facility certificate of liability insurance

Authority: IC 13-7-3; IC 13-7-7; IC 13-7-8.5-4 Affected: IC 13-7-8.5; 40 CFR 264.151(j)

Sec. 36. A certificate of liability insurance as required in 329 IAC 3-22-24 or 329 IAC 3-47-8 (see 329 IAC 3-47-10(j)) must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Hazardous Waste Facility Certificate of Liability Insurance



Affidavits to follow

٠.	ompany Name: Refined N	Metals (	Corpora	tion		
	gulation Violated329 IA				TAC 3-22-24	to
	essments for each violat				3-22-35	-
	separate worksheets and			rereineo		
	(If more space is need	ded, att	ech sepa	rate sheet.)		
	Part 1 - Seriousno	ess of V	iolation	Penalty		
1.	Potential for Narm:		Ma	jor		
2.	Extent of Deviation:		Ma	<del>jor</del>		
3.	Matrix Cell Range:		20.000	to 25.000		
	Penalty Abount Choses	n :	25	.000		
	Justification for Per Amount Chosen:	nalty	Uppe	r End		
4.	Per-Day Assessment:					
	Part 11 - Penals	y Adjus	trents			
	Perc	entage	Change	Dollar Amount	1	
1.	Good faith efforts to comply/lack of good faith:	0	_	0		
2.	Degree of willfulness and/or negligence:	0	_	0	•	
3.	Bistory of Boncompliance:		_	-		
4.	Other unique factors:	0		0	•	
5.	Justification for Adjustments:					
•	Percentage adjustments as smount calculated on line	re applie 4. Pari	ed to th	e dollar		
6.	Adjusted Per-day Fenalty (Line 4, Part I + Lines 1-4, Part II):			25,000		
7.	Number of Bays of Violation:			0		
8.	Multi-day Penalty (Number of days x Line 6, Part II):			0		
9.	Economic Benefit of Honcompliance:			0		
	Justification:					
	Total (Lines 8 + 9, Fart			0	•	
11.	a ility to hay Adjustmen	it:		0		
	Justification for Adjustment:			0	:	
12.	Total Penalty Amount (bust not exceed \$25.0 per day of violation):			25,000		

### RCRA PENALTY COMPUTATION - JUSTIFICATION

REGULATION(S) VIOLATED: 40 CFR

265.143 to 265.147

POTENTIAL FOR HARM CATEGORY:

Major

A hazardous waste facility operation without adequate liability coverage or financial assurance for closure poses a major threat to human health and the environment. In the event that improper closure results, or incase of an accident, the facility may default on it's responsibility to pay damages, and close properly.

EXTENT OF DEVIATION CATEGORY: Major

The failure to demonstrate financial responsibility is a major deviation of requirements for all TSD facilities.

PENALTY ASSESSED THIS VIOLATION: 25,000

Company Name: Refine	d Metals Corpor	ation
Regulation Violated 329		
Assessments for each viole		
on separate worksheets an		
(If more space is ne	eded, attach sepa	rate sheet.)
Part I - Serious	ness of Violation	Penalty
1. Potential for Marm:	Mode	rate
2. Extent of Deviation:	_	<u>r</u>
3. Matrix Cell Range:	20,00	0 - 25,000
Penalty Amount Chose	en: 22,5	00
Justification for Po Abount Chosen:	enalty	
4. Per-Day Assessment:	<del></del>	·
Part II - Pena	Ity Adjustments	
<u>Pe</u> :	rcentage Change*	Dollar Amount
1. Good faith efforts to comply/lack of good faith:	0	0
2. Degree of willfulness and/or megligence:	0	0
J. History of moncompliance:	0	0
4. Other unique factors:		0
5. Justification for Adjustments:		
Percentage adjustments a smount calculated on lin	are applied to the	e dollar
6. Adjusted Per-day Penalty (Line 4, Part 1 + Lines 1-4, Part 11):		22,500
7. Number of Days of Violation:		0
8. Multi-day Penalty (Number of days x Line 6, Part 11):		0
9. Economic Benefit of . Noncompliance:		0
Justification:		
lD. Total (Lines 8 + 9, Par ll. Ability to Pay Adjustme		28.500
	;	0
Justification for Adjustment:		-
12. Total Penalty Amount (Bust not exceed \$25, per day of violation)	000	<del>22,500</del>

### RCRA PENALTY COMPUTATION - JUSTIFICATION

REGULATION(S) VIOLATED: 40 CFR 265.112 (d)(3)

POTENTIAL FOR HARM CATEGORY: Major

The facility continued to operate after termination of interim status. A closure plan ensures that the facility closed adequately and that it does not become a hazard to human health and the environment. Absent this closure plan, the RCRA program was significantly affected.

### EXTENT OF DEVIATION CATEGORY: Major

The facility has substantially deviated from the requirements of the regulations. 265.112(d)(3) states that an owner/operator must submit a closure plan no later than 15 days after termination of interim status. Interim status terminated at the facility on November 8, 1985. The owner/operator failed to submit a closure plan for the facility after interim status terminated on November 8, 1985.

PENALTY ASSESSED THIS VIOLATION: .22,500

Company Name:Refined Metal	s Corporation
Regulation Violated Section 30	05(a) of RCRA
Assessments for each violation shon separate worksheets and total	ould be determined led.
(If more space is needed, a	ttach separate sheet.)
Part 1 - Seriousness of	Violation Penalty
1. Potential for Marm:	- Major
2. Extent of Deviation:	Major
3. Matrix Cell Range:	20,000 - 25,000
Penalty Amount Chosen:	25,000
Justification for Penalty Abount Chosen:	Upper End
4. Per-Day Assessment:	<del></del>
Part II - Penalty Adj	ustments
Percentag	e Change* Dollar Amount
1. Good faith efforts to comply/lack of good faith:  0	0
2. Degree of willfulness and/or negligence:	
3. History of boncompliance: 0	0
4. Other unique factors: 0	0
5. Justification for Adjustments:	
* Percentage adjustments are app amount calculated on line 4. P	lied to the dollar
Fenalty (Line 4. Low poin Part I → Lines 1-4. Part II):	
7. Number of Days of Violation:	1235
8. Multi-day Penalty (Number of days x Line 6, Part II):	123,500
9. Economic Benefit of Soncompliance:	
Justification:	
10. Total (Lines 8 + 9, Part 11):	148,500
11. Ability to Pay Adjustment:	
Justification for Adjustment:	0
12. Total Penalty Amount (Bust not exceed \$25,000	148,500

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### RCRA PENALTY COMPUTATION - JUSTIFICATION

REGULATION(S) VIOLATED: 40 CFR Section 3005(a) of RCRA

POTENTIAL FOR HARM CATEGORY: Major

By not certifying compliance with the financial responsibility requirements, the facility interim status terminated on November 8. 1985. The potential harm to the environment is major since the facility must have the financial responsibility to properly close the facility, clean up releases and pay any third party claims for damage.

The potential for harm to the RCRA program is also major since a facility must have interim status or a finally effective RCRA permit to continue operation. If interim status terminates, the facility must cease operation of the land disposal unit and submit a closure plan.

### EXTENT OF DEVIATION CATEGORY: Major

Interim status terminated at the facility on November 8, 1985. The facility continues to operate without interim status or a finally effective RCRA permit. This is a major deviation from the requirements of 3005(a).

### PENALTY ASSESSED THIS VIOLATION: 148,500

\$100.00 per day of violation at 1235 days = \$123,500 LOTS penalty, plus upper end of one time violation 25,000

Total = 148,500

November 8, 1985 to May 30, 1989 when the case was referred to D.O.J.

### U.S. ENVIRONMENTAL PROTECTION AGENCY TECHNICAL ENFORCEMENT SUPPORT AT HAZARDOUS WASTE SITES

TES IV CONTRACT NO. 68-01-7351 WORK ASSIGNMENT NO. R05010

TITLE SEARCH SUMMARY REPORT

**FOR** 

REFINED METALS CORPORATION

**EPA REGION V** 

JACOBS ENGINEERING GROUP INC. PROJECT NUMBER: 05-B883-00

**JUNE 1988** 

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### 1.0 INTRODUCTION

Refined Metals Corporation, Located at 3700 South Arlington Avenue, Indianapolis, Indiana, reclaims lead from spent lead-acid batteries. The waste piles and several areas of soil contamination at this facility could be acting as potential sources of lead contamination. In addition, Refined Metals Corporation has allegedly lost its interim status for failure to certify compliance with the necessary financial requirements by November 8, 1985.

Jacobs Engineering was assigned Work Assignment R05010 to conduct a title search of the Refined Metals Corporation site. The title search determined the history of ownership of the property from 1979 to the present and provided any available information regarding liens, leases, and mortgages associated with the property.

### 2.0 TITLE SEARCH

First American Title Insurance Company of Indianapolis, Indiana was subcontracted by Jacobs Engineering to conduct a title search of the Refined Metals Corporation property. The tax I.D. number for the Refined Metals Corporation property was obtained from the Franklin Township Assessors Office (ph:317-236-4191). First American Title was supplied with the name of the suspected owner of the property (Refined Metals Corporation), the property address (3700 South Arlington Avenue, Indianapolis, Indiana), and the tax I.D. number for the property (300-5139) as a basis for conducting a title search. First American Title conducted a title search from January 2, 1979 to May 18, 1988. The title search identified the following in regard to the site: (1) current and previous owners; (2) taxes payable; (3) mortgages; (4) easements; and (5) sewer service agreements.

Certified copies of all supporting documents were submitted to Jacobs by First American Title and were reviewed for correct property examined, erroneously included documents, missing documents, and incomplete documents. Copies of all supporting documents are provided in the attachment to this report. Certified copies of all documents have also been submitted.

### 3.0 LEGAL DESCRIPTION

Refined Metals Corporation is located at 3700 South Arlington Avenue in Indianapolis, Indiana. The tax I.D. number for this property is 300-5139. The following legal description of this property was taken directly from the deed that conveyed and warranted the property from NL Industries, Inc. (formerly known as National Lead Company) to Refined Metals Corporation (document no. 79-91445, attachment page 11):

Part of the Northeast quarter and part of the Southeast quarter of Section 27, Township 15 North, Range 4 East, Marion County, Indiana, being more particularly described as Commencing at the southeast corner of said northeast quarter; thence north 0 degrees 04 minutes 08 seconds west, on and along the east line of said northeast quarter, 27.83 feet measured (27.8 feet deed) to the southwesterly line of the original 80 foot right of way line of the C.C.C. & St. L.R.R.; thence north 49 degrees 57 minutes 00 seconds west, on and along said right of way line, 19.61 feet measured (19.60 feet deed) to the point of beginning of this description; thence south 0 degrees 04 minutes 08 seconds east, parallel to and 15.00 feet from said east line, 40.45 feet; thence south 0 degrees 00 minutes 00 seconds west, parallel to and 15.00 feet from the east line of said southeast quarter, 1527.23 feet to the northeasterly line of Big Four Road; thence north 49 degrees 57 minutes 00 seconds west, on and along said northeasterly line, 1150.00 feet; thence north 40 degrees 03 minutes 00 seconds east 80.00 feet; thence north 49 degrees 57 minutes 00 seconds west, parallel to said northeasterly line, 280.24 feet; thence north 40 degrees 02 minutes 50 seconds east measured (north 40 degrees 03 minutes east deed) 1120.00 feet to said southwesterly railroad right of way line; thence south 49 degrees 57 minutes 00 seconds east, on and along said right of way line, 421.53 feet to the point of beginning.

Hereafter, the property described by the above legal description will be referred to as "the parcel of interest."

The plat map clearly shows the parcel of interest described in the above legal description (attachment page 1). The plat map is dated March 1969 and lists National Lead Company as the owner of the parcel of interest at that time. A current plat map, listing Refined Metals Corporation as the current owner of the parcel of interest is not available at this time.

### 4.0 CHAIN OF OWNERSHIP SUMMARY

First American Title used January 2, 1979, as a starting point for their search. However, the last transaction prior to this data was also examined, which was in 1966. On May 21, 1966, the Cleveland, Cincinnati, Chicago, and St. Louis Railway Company and the New York Central Railroad Company (grantors, the latter as lessee to the former) conveyed and quitclaimed the parcel of interest to National Lead Company (grantee). Individuals associated with the Cleveland, Cincinnati, Chicago, and St. Louis Railway Company, as of May 10, 1966, include S.H. Hellenbrand (Vice President) and R.W. Carroll (Secretary). Individuals associated with the New York Central Railroad Company, as of March 9, 1966 include G.C. Holpp (Assistant Secretary) (document no. 66-27342, attachment page 5).

On November 21, 1979, NL Industries, formerly known as National Lead Company (grantor) conveyed and warranted the parcel of interest to Refined Metals Corporation (grantee). Note that this transaction was subject to the following conditions (document 79-91445, attachment page 11):

- a. Taxes for the year 1979 and subsequent years.
- b. Zoning, building and building line restrictions, regulations and ordinances of the city, county, or town in which the Premises is situated.
- c. Such state of facts shown on that certain survey certified August 29, 1979, by Frank M. Hohn and Associates, Inc., Surveyors, including easement for existing railroad spur; and easement for public utilities as evidenced by the water and

overhead power lines along the east portion of the Premises; and any subsequent changes there to.

- d. Right of way grant in favor of Marion County, Indiana recorded April 27, 1967, as Instrument #67-17171, and by grant recorded June 23, 1967, as Instrument #67-27556.
- e. Railroad side track agreements affecting the Premises.
- f. License Agreement, dated October 2, 1967, between National Lead Company and The New York Central Railroad Company.
- g. Letter Agreement dated March 12, 1971, between Penn Central Transportation Company and NL Industries, Inc.
- h. Lease dated April 1, 1967, between New York Central Railroad Company and NL Industries, Inc.
- i. Any easements, reservations, covenants, agreements and restrictions of record.

Individuals associated with NL Industries, Inc. as of November 21, 1979, include Edward J. Galvin (Vice President) and John T. Rafferty (Assistant Secretary) (document no 79-91445, attachment page 11). The chain of ownership, along with a summary of all certified documents submitted to Jacobs by the title search firm, is provided on page 36 of the attachment.

### 4.1 CURRENT OWNER

The current owner of record of the parcel of interest (3700 South Arlington Avenue, Indianapolis, Indiana) is Refined Metals Corporation.

### 4.2 TAXES PAYABLE

Taxes on the parcel of interest (tax I.D. no. 300-5139) were due in May of 1988 and are due in November of 1988, each in the amount of \$17,390.36. Taxes due in May have been paid in the name of Refined Metals Corporation. In addition, the assessed valuation is as follows: Land - \$76,450, and Improvements - \$228,200 (Schedule A, attachment page 4).

### 4.3 MORTGAGES

The title search revealed that a mortgage and indenture of trust exists in regard to the parcel of interest. Refined Metals Corporation and the City of Beech Grove, Indiana (mortgagor), were given a mortgage on January 15, 1980, to secure an indebtedness in the original principal amount of \$2,500,000 by the First Bank and Trust Company of Speedway, Indiana (trustee, mortgagee). The City of Beech Grove made a loan to Refined Metals Corporation and provided the funds by issuing industrial revenue bonds. Refined Metals Corporation granted a mortgage of the parcel of interest and entered into this mortgage and indenture of trust to secure the \$2,500,000 outstanding debt to the City of Beech Grove (document no. 80-07425, attachment page 14) Note that the entire document has not been provided in the attachment to this report, as the document exceeds sixty pages in length and the contents do not have an impact on the ownership history for the parcel of interest. Therefore, the additional costs of acquiring certified copies was not justified.

The loan to Refined Metals Corporation was to be used for improvements to the facility at the parcel of interest. The "Project Description" refers to Refined Metals Corporation as a wholly-owned subsidiary of Inco ElectroEnergy Corporation and lists the proposed improvements at the facility (to be financed by the \$2,500,000 loan) to include substantial repairs, renovations, and installation of new equipment at the facility to improve anti-pollution and employee health and safety measures. Note that this is the only documentation that lists Refined Metals Corporation as a wholly-owned subsidiary of Inco ElectroEnergy Corporation (Exhibit A of document no. 80-07425, attachment page 20).

### 4.4 EASEMENTS

When Refined Metals Corporation acquired the parcel of interest from NL Industries, Inc. (National Lead Company) on November 21, 1979, the

transaction was subject to the following (document 79-91445, see attachment page 11):

### 4.4.1 Right of Way (1)

Right of way granted on March 15, 1967, by National Lead Company (Warren T. Trask, Vice President) to Marion County, Indiana, for a public highway (Arlington Avenue) which passes over the east side of the parcel of interest, fully described in the legal description contained in the right of way grant (document no. 67-17171, attachment page 23).

### 4.4.2 Right of Way (2)

Right of way granted on June 1, 1967, by the Cleveland, Cincinnati, Chicago, and St. Louis Railway Company (S.H. Hellenbrand, Vice President; R.W. Carroll, Secretary) and the New York Central Railroad Company (S.H. Hellenbrand, Vice President; R.W. Carroll, secretary) to Marion County, Indiana, for a public highway (Arlington Avenue) which passes over the parcel of interest, fully described in the legal description contained in the right of way grant (document no. 67-27556, attachment page 26).

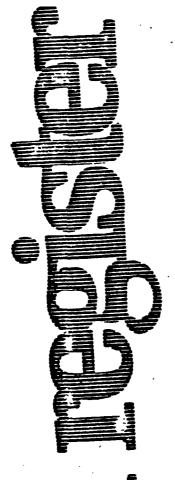
### 4.5 SEWER SERVICE AGREEMENT

Refined Metals Corporation entered into an agreement (recorded on August 1, 1984; Lee Swain, President) with the City of Indianapolis, Indiana, requesting permission to connect to the city's public sanitary sewer in Arlington Avenue to discharge sanitary sewerage. The fee charged for this connection was \$ 26,472.34. A map showing the proposed sewer service agreement is attached to the sewer service agreement and is referred to as Exhibit B (document no. 84-59358, attachment page 31).

### 5.0 CONCLUSIONS

Refined Metals Corporation, a wholly-owned subsidiary of Inco ElectroEnergy Corporation, is the current owner of the parcel of land located at 3700 South Arlington Avenue in Indianapolis, Indiana, tax I.D. no. 300-5139. The most recent documentation (August 1, 1984) lists Lee Swain as the President of Refined Metals Corporation.

Wednesday September 25, 1985 Kerkherl Muro Hade



### Part II

# Environmental Protection Agency

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities; EPA Administered Permit Programs: Hazardous Waste Permit Program; Notice of Implementation and Enforcement Policy





40 CFR Parts 265 and 270

15WH-FRL 2868-3]

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities; EPA Administered Permit Programs: the Hazardous Waste Permit Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of implementation and enforcement policy.

summary: On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 (HSWA) were enacted (Pub. L. 98-616). These Amendments made changes to section 3005(e) of the Solid Waste Disposal Act. as amended by the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6925(e). Under the amendment to section 3005(e). an interim status land disposal facility will lose interim status on November 8. 5 unless the facility applies for a final rmination regarding the issuance of nit and certifies compliance with plicable ground-water monitoring and financial responsibility requirements by that date. This notice sets forth the Environmental Protection Agency's (EPA) policy regarding the implementation of this provision as it applies to interim status land disposal

DATE: All interim status land disposal facilities are required to submit an application for a final determination and the applicable certifications by November 8, 1985, or interim status will be terminated by statute. In the case of each land disposal facility which is in existence on the effective date of statutory or regulatory changes under RCRA that render the facility subject to the requirement to have a permit under section 3005, facilities will have 12 months after the date on which the facility first becomes subject to permit requirements to submit an application for a final determination and the applicable certification, or interim status will be terminated by law.

facilities.

### FOR FURTHER INFORMATION CONTACT:

Region I: Jerry Lev Chief, Compliance Monitoring and forcement Section "SE/Causeway U.S. EPA, John F. nedy Feder | Building, Boston, 02203, (617, 223-1591, FTS 223-1591. Region II: Stanley Siegel, Chief, NY
Compliance Enforcement Section
2AWM, U.S. EPA. 26 Federal Plaza,
Room 1043, New York, NY 10278, (212)
264-8356, FTS 264-8356.

Region III: Peter Schaul, Haza: 'ous Waste Enforcement Branch 3H-WLL, U.S. EPA, 841 Chestnut Street, Philadelphia, PA 19107, (215) 597-8334, FTS 597-8334.

Region IV: Allan Antley, Chief, Waste Compliance Section, U.S. EPA, 345 Courtland St., NE. Atlanta, GA 30365, (404) 881-4552, FTS 257-4552.

Region V: Bill Muno, Chief, RCRA Enforcement Section, 5HE-12, U.S. EPA, 230 South Dearborn Street, Chicago, IL 60604, (312) 886-4434, FTS 886-4434.

Region VI: William Rhea, Chief, Hazardous Materials Branch 6AW-H, U.S. EPA, 1201 Elm Street, Dallas, TX 75270, (214) 767-9732, FTS 729-9732.

Region VII: Wayne Kaiser, RCRA
Compliance Section, Waste
Management Division, U.S. EPA, 726
Minnesota Avenue, Kansas City, KS
66101. (913) 236-2891, FTS 757-2891.

Region VIII: Diana Shannon, Chief, RCRA Compliance Monitoring 8HWM-WM, U.S. EPA, Denver Place, Suite 1300, 999 18th Street, Denver, CO 80202-2413, (303) 293-1502, FTS 564-1500.

Region IX: Judy Walker/Industry
Assistance, Toxics and Waste
Management Division T-2-1, U.S.
EPA, 215 Fremont Street, San
Franscisco, CA 94105, (415) 974-7472,
FTS 454-7472.

Region X: Charles Rice, Chief, RCRA Compliance Section M/S-533, U.S. EPA. 1200 6th Avenue, Seattle, WA 98101, (206) 442-0695, FTS 399-0695.

SUPPLEMENTARY INFORMATION: The contents of today's Notice are listed in the following outline:

L Background

II. Statutory Interpretations

A. Land Disposal Facility

B. Interim Status
 1.Class I Hazardous Waste Underground
 Injection Wells

2. Waste Exclusions

3. Late and Non-Notifiers

4. Protective Filers

C. Application for Final Determination Regarding the Issuance of a Permit

D. Certifica: of Compliance with all Applicable Ground-Water Monitoring and Financial Responsibility Requirements

III. Failure to Satisfy Statutory Requirements

#### I. Background

Under section 3005(a) of RCRA, owners or operators of hazardous waste treatment, storage or disposal facilities are required to obtain a RCRA permit.

Recognizing that EPA would not be able to issue permits to all hazardous waste management facilities at once, section 3005(e) of RCRA provides that a hazardous waste management facility that meets certain requirements will be treated as having been issued a permit. This statutorily-conferred authorization to operate pending issuance or denial of a permit is known as "interim status." A facility may lawfully operate only if it has a permit or interim status.

Prior to the enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA) a facility's interim status could be terminated only when final administrative disposition of the permit application was made, or if the facility failed to furnish the necessary application information. HSWA amended section 3005(e) to provide additional grounds for termination of interim status for land disposal facilities.

Section 3005(e)(2) which is referred to, hereafter, as the Loss of Interim Status provision states:

In the case of each land disposal facility which has been granted interim status under this subsection before the date of enactment of the Hazardous and Solid Waste Amendments of 1984, interim status shall terminate on the date 12 months after the date of enactment of such Amendments whees the owner or operator of such facility

"(A) applies for a final determination regarding and issuance of a permit under subsection (c) for such facility before the date 12 months after the date of enactment of such Amendments; and

"(B) certifies that such facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements."

Interim status land disposal facilities must satisfy these requirements by November 8, 1985. Under section 3005(e)(3) each land disposal facility which is in existence on the effective date of statutory or regulatory changes under this Act that render the facility subject to the requirement to have a RCRA permit and which qualifies for interim status must apply for a final determination and submit the applicable certifications within twelve months after the date on which the facility first becomes subject to such RCRA permit requirements or interim status terminates.

The owner/operator of each interim status land disposal facility is responsible for applying for the final permit determination and satisfying certification requirements. In view of the importance of proper and timely filings of permit applications and certifications, and to provide an orderly process for

the submittal of both permit applications and compliance certifications for interim status land disposal facilities, the Agency is today publishing this policy on the Loss of Interim Status provision.

### II. Statutory Interpretations

This section defines key terms which appear in the statute.

### A. Land Disposal Facility

The stafute specifies that ". . . all interim status land disposal facilities . . ." are subject to the requirements of the Loss of Interim Status provision. For the purpose of section 3005(e), the Agency interprets the term "land disposal facilities" to encompass the following types of facilities: landfills: land treatment units; surface impoundments for disposal, treatment, or storage; waste piles; and Class I hazardous waste underground injection wells. EPA believes this interpretaton is consistent with RCRA statutory definitions of land disposal (see sections 1004(3), 3004(k)). the legislative history of section 3005(e)(2) and (3) and the general objective of this provision (i.e., to facilitate prompt processing of permits for the compliance by land-based facilities).

#### B. Interim Status

A treatment, storage or disposal acility that was in existence on November 19, 1980, or on the effective date of statutory or regulatory changes that rendered the facility subject to the requirement to have a RCRA permit, notified EPA as required by RCRA section 3010, and filed a timely application for a RCRA permit (Part A application), is considered to be in interim status until final administrative disposition of the permit application or until interim status is terminated for failure to submit information required to process the permit application. These facilities are subject to the Loss of Interim Status provision. In addition, in States or territories with EPA-authorized RCRA programs, land disposal facilities that have not yet been granted or denied a final RCRA permit (including land disposal facilities that were issued State permits after November 8, 1984) are to submit certifications and Part B applications.

### 1. Class I Hazardous Waste Underground Injection Wells

Class I hazardous waste injection wells that were in existence on November 19, 1980, or the effective date of statutory or regulatory changes that ordered the facility subject to the quirement to have a RCRA permit, notified EPA as required by § 3010, and

filed a Part A RCRA application are considered to be in interim status under RCRA until such time as final administrative disposition of a RCRA section 3005(c) permit application is made. Such facilities must comply with the applicable sections of Subparts A-E of Part 265 interim status requirements. They are exempted under 40 CFR 265.430 from the RCRA interim status closure/post-closure and financial responsibility requirements of Subpart G and H and are not subject to the groundwater monitoring requirements of Subpart F.

Every state and jurisdiction has an Underground Injection Control (UIC) program in place, either stateadministered or EPA-administered, so that all Class I bazardous waste wells are also subject to the UIC requirements. The requirements at 40 CFR 144.21 authorize existing Class I injection wells to operate, subject to certain conditions, until the effective date of UIC permit issuance or denial, in States with approved UIC programs, for five years after approval or promulgation of the UIC program (but not thereafter unless a complete permit application is pending). In States with EPA-administered UIC programs. injection is authorized under the same section, subject to certain conditions, for one year after promulgation of the UIC program and is prohibited thereafter unless a complete permit application is pending. Therefore, until the UIC permit is issued as stated above, the Class I hazardous waste underground injection well is operating under authorization by rule and must comply with UIC program requirements specified, inter alia, under 40 CFR 144.28.

Under previous regulations, once a well received a UIC permit, the well was deemed to have a permit-by-rule under RCRA. However, the regulations have been changed due to the enactment of section 3004(u) of RCRA, which provides that corrective action requirements for all solid waste management units must be addressed in any section 3005(c) RCRA permit. The regulations, therefore, have been amended to provide that until such time as a corrective action plan at a given facility addresses corrective> action for all units, UIC permits issued to Class I hazardous waste underground injection wells after November 8, 1984 will be considered valid permits under the Safe Drinking Water Act, but will not be section 3005(c) RCRA permits-byrule, 50 FR 28702, 28715-16, 28752 (July 15, 1985) (amending 40 CFR 270.60(b)). Therefore, wells at facilities which have not yet met corrective action requirements for all units at the facility. consistent with State law under

approved UIC aram. retain RCRA interim status, whether or not they have been issued a UIC permit. Such well operators who have interim status must, therefore, certify compliance with the "applicable" ground-water monitoring and financial responsibility requirements. The specific ground-water monitoring and financial responsibility requirements with which the facility must certify compliance are discussed in detail below in section D.

### 2. Waste Exclusions

Sections 260.20 and 260.22 of EPA's hazardous waste regulations provide a regulatory mechanism whereby the Agency may temporarily exclude a hazardous waste generated at a specific facility from being treated as a hazardous waste under the RCRA regulations. Interim status land disposal facilities handling wastes that have received "temporary" exclusions are also subject to the Loss of Interim Status provision. A "temporary" exclusion granted under 40 CFR 260.20 and 260.22 by EPA does not terminate the interim status of facilities handling that waste. Thus, the requirements of section 3005(e)(2) apply to these facilities, including facilities where the temporarily excluded waste is the only "hazardous" waste managed.

Facilities which only handle "hazardous" waste subject to a temporary exclusion, however, are not considered to be managing hazardous waste under EPA regulations. Thus they are not currently required to meet Part 265 standards (including ground-water monitoring and financial responsibility requirements), or to obtain a permit. In order words, facilities whose only "hazardous" waste has been "temporarily" excluded, while subject to the Loss of Interim Status provision, are not required to certify compliance with groundwater monitoring and financial responsibility requirements and/or submit a Part B application by November 8, 1985 in order to retain interim status after that date unless their exclusion is revoked prior to this time. If such waste exclusion is revoked, this regulatory action will immediately subject the facility to the requirements of section 3005(e)(3) of RCRAL

### 3. Late and Non-Notifiers

The Agency believes that the intent of the Loss of Interim Str. provision was to bring all unpermitted and disposal facilities into compliance with groundwater monitoring and financial responsibility requirements or to close them. In order to advance this purpose, the Agency believes that it should also

ddress the problem of those facilities hich never qualified for interim status. I who are operating under Interim Status Compliance Letters or section 3008 compliance orders. 40 CFR 265.1(b) states that "the standards in this Part apply to those owners and operators of facilities in existence on November 19, 1980, who have failed to provide timely notification as required by Section 3010 of RCRA, and/or failed to frie Part A of the Permit Application as required by 40 CFR 270.10 (e) and (g).

CFR 270.10 (e) and (g). The December 12, 1981 "Guidance on the Applicability of the Interim Status Standards (40 CFR Part 265) to Facilities which have Failed to Qualify for Interim Status" to EPA Regional Enforcement Division Directors also addresses the problem of "non-notifiers." The guidance directed that the Agency would enforce the interim status requirements through the use of Interim Status Compliance Letters (ISCL) and 3008 compliance orders including the assessment of penalties, where appropriate. This use of penalties was emphasized to eliminate the competitive advantage that might otherwise be enjoyed by the "non-notifiers" over facilities that complied with all notification and filing requirements. In keeping with that policy, EPA

lieves it reasonable to require owners operators of land disposal facilities jubmit a Part B application and the ground-water monitoring and financial responsibility compliance certifications as a condition of EPA's continued forbearance from enforcement action. Therefore, those facilities which have not fully qualified for interim status should also submit certifications and permit applications if they wish to continue operating.

#### 4. Protective Filers

Protective filers, i.e., facilities that were in existence on November 19, 1980, notified the Agency of their activities according to section 3010, and submitted their Part A application, but have never conducted a regulated activity requiring a permit are not considered by the Agency to be in Interim Status and are not subject to the Loss of Interim Status provision.

C. Application for Final Determination Regarding the Issuance of a Permit

Prior to the enactment of the HSWA, land disposal facilities were not required to submit "eir Part B permit applications to EPA, or a State) until 6 months after EPA (or the State) "ested it. Section 3005(e)(2) now

ides that land disposal facilities
("apply for final determination
regarding the issuance of a permit" by

November 8, 1985 or lose their interim status, regardless of whether the EPA Regional Office or authorized State has requested the Part B application.

Land disposal facilities wishing to retain interim status and continue operations as a hazardous waste land disposal facility after November 8, 1985. are required to submit a Part B permit application (or in an authorized State, the State equivalent of the Part B application) by November 8, 1985, to satisfy this requirement. These permit applications need to address all applicable requirements, including those set forth in the Hazardous and Solid Waste Amendments of 1984. In States where EPA manages the RCRA program. the Part B application is to be sent to the EPA Regional Office. In authorized States that manage the RCRA program, the permit application is to be sent to both the EPA Regional Office and to the

Some facilities have indicated that they plan to continue receiving waste after November 8, 1985, but intend to stop waste receipt and close shortly thereafter. Such facilities must submit an application for a final operating permit, as noted above. This is necessary because, as of November 8, 1985, it is assumed that an operating permit of some kind will be issued to them if they have not closed in a manner that precludes the duty to obtain a permit. The content of the application, however, may be affected by the expected remaining operating life of the facility. For example, if the facility will close before November 1988 and this is reflected in the application (e.g., in the closure plan), then there would be no need to address the HSWA requirement to retrofit existing surface impoundments (section 3005(j)). Applicants planning to continue waste receipt after November 8, 1985, and to close shortly thereafter should discuss the applicability of permit provisions with the EPA Regional Office (and the Authorized State, if appropriate) as soon as possible.

D. Certification of Compliance With All Applicable Ground-Water Monitoring and Financial Responsibility Requirements

In accordance with the requirements of the Loss of Interim Status provision. land disposal facilities must also "certify compliance with all applicable ground-water monitoring and financial responsibility requirements." All applicable ground-water monitoring and financial responsibility requirements are defined as 40 CFR Part 265 Subparts F and H, or the State analogue thereto. The requirements that are considered

applicable depend upon the authorization status of the State in which the facility is located.

 Facilities located in a State with a Federally managed RCRA program must certify compliance with 40 CFR Subparts F and H ground-water monitoring and financial responsibility

requirements.

• Facilities located in a State with Only Phase I Authorization under the RCRA program must certify compliance with the authorized State ground-water monitoring requirements. In States with financial responsibility requirements incorporated as a part of their RCRA programs, facilities must certify compliance with authorized State financial responsibility requirements.

 Facilities located in a State with Phase II or Final Authorization must certify compliance with authorized State ground-water monitoring and financial

responsibility requirements.

As stated in section II. A., Land Disposal Facility, Class I hazardous waste underground injection wells must comply with a different set of interim authorization requirements.

• Facilities located in States with Federally managed underground injection control (UIC) programs must certify compliance with 40 CFR 144.28(g)(1)(iii) ground-water monitoring requirements, as required by the Director. To certify compliance with financial responsibility requirements. Class I hazardous waste underground injection wells must be in compliance with 40 CFR 144.28(d) and 40 CFR Part 144 Subpart F financial responsibility requirements.

• In primacy States, facilities with Class I hazardous waste underground injection wells must certify compliance with requirements that are the equivalent of 40 CFR 144.28(g)(h)(iii) ground-water monitoring and Part 144 Subpart F and 144.28(d) financial responsibility requirements.

• Facilities issued a UIC permit after November 8, 1984, but which are still under RCRA interim status (see Section II. B. 1) must certify compliance with 40 CFR 146.13(b)(4), ground-water monitoring requirements, where applicable, and 40 CFR 144 Subpart F financial responsibility requirements; or, in primacy States, with equivalent State requirements.

To certify compliance with all applicable requirements a facility must be in "physical" compliance. "Physical" compliance, for the purpose of certification under this provision, means that a facility has "physically" in place all that is specified in the applicable Federal or State ground-water

monitoring and financial responsibility requirements.

A facility that is not in compliance with applicable ground-water monitoring and/or financial responsibility requirements of 40 CFR Part 265 or applicable State requirements may not certify compliance. For example, a facility lacking monitoring wells and a valid waiver may not certify. Similarly, a facility failing to meet financial responsibility requirements may not certify. If a representative of a facility has admitted noncompliance in an enforcement action the facility may not certify unless it achieves and maintains compliance.

Compliance with the financial responsibility requirements is the second pre-requisite for retaining interim status after November 8. The Agency recognizes that some facilities are encountering difficulties in obtaining insurance to satisfy the financial responsibility requirement governing liability coverage (40 CFR 264.17 and 265.17). EPA has recently published a proposed rule which solicits comment on five options the Agency is considering to remedy the problem regarding the availability of liability insurance for RCRA facilities. (See 50 FR 33907.)

For the purpose of this provision, facilities are urged to certify compliance with all applicable ground-water monitoring and financial responsibility requirements for the facility as a whole. If the owner/operator submits the application and the applicable certifications of compliance for some but not all land disposal units, the termination of Interim Status only affects the unit or units at the hazardous waste management facility for which the application and/or certification were not submitted.

EPA believes that this interpretation is reasonable. EPA sees no evidence in the legislative history to suggest that Congress meant to stop all operations at a multi-unit facility because a Part B or applicable certifications had not been

properly submitted for one unit. Furthermore, this interpretation of taking action at facilities on a unit-byunit basis has precedent in EPA's hazardous waste regulations. Section 270.1 allows EPA to deal with permit issuance to a facility on a unit-by-unit basis. With regard to permit issuance. \$ 270.1(c)(4) states that "EPA may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

Facilities should certify compliance by typing or printing a certification statement as shown in Appendix A. These forms should be signed by the individuals specified in 40 CFR 270.11. An original certification will be required for each submission (no photocopies of signatures will be acceptable).

Copies of a facility's certification and Part B or state final operating permit application must be submitted to both the EPA Regional Office and the State in which the facility is located. However, facilities in a State with a Federally run RCRA program need only submit these documents to the Region.

### III. Failure To Satisfy Statutory Loss of Interim Status Requirements

All owners/operators of land disposal facilities or units that do not apply for a final determination with regard to a permit and certify compliance with all applicable ground-water monitoring and financial requirements, must comply with all applicable closure and postclosure requirements as specified in 40 CFR Part 285 Subpart G or the equivalent State requirement, as applicable, and must stop introducing wastes into facilities or units not retaining interim status on and after November 8, 1985. The owner/operator of the facility or affected units will be required to submit a closure plan within 15 days of loss of interim status (40 CFR 265.112), i.e., by November 23, 1985. In addition, facilities that closed after

January 26, 1983, must submit their postclosure permit application (upon request by the Region or authorized States). Post-closure permit applications must address continuing releases as required by the newly amended section 3004(u) of RCRA. (Facilities losing interim status remain subject to corrective action orders and civil actions.)

Owners and operators of facilities should be aware that false certification and operation without interim status are criminal offenses. In addition, the Agency intends to take enforcement action regarding inadequate closures.

Dated: September 16, 1985.

Lee M. Thomas,

Administrator.

Appendix A—Certification Statement

I \_\_\_\_\_\_ am the owner/
operator of \_\_\_\_\_\_ (EPA ID \*) located at:
\_\_\_\_\_ I certify that the
\_\_\_\_\_ (name of unit(s) as identified on the attached surface topography map) at this facility is in compliance with: (1) (All applicable ground-water monitoring and financial responsibility requirements in 40 CFR

Part 265 Subparts F and H; or (2) all

requirements which are part of the

State's authorized hazardous waste

monitoring and financial responsibility

applicable State ground-water

program under section 3006 of RCRA.

I, \_\_\_\_\_\_\_ as owner-operator of \_\_\_\_\_\_ located at \_\_\_\_\_\_ knowingly and willfully make this true and accurate certification to the United States Environmental Protection Agency pursuant to section 3005(e) of the Hazardous and Solid Waste Disposal Act, as amended.

(Date)

(Signature)

Note: Federal Law subjects anyone who falsely makes or uses this certification to a fine and imprisonment under SWDA, 18 U.S.C. 1001 and 18 U.S.C. 1341.

[FR Doc. 85-22869 Piled 9-24-85; 8:45 am]

### ATTACHMENT V

### CASE PLAN

### Refined Metals Corporation

This action seeks to enjoin Refined Metals Corporation from operating a hazardous waste treatment, storage, or disposal facility after loss of interim status and without obtaining a RCRA permit for the unit. This action also seeks corrective action pursuant to Section 3008(h) of RCRA for documented releases from the facility to the soil in and around the facility.

Refer matter to U.S. EPA Headquarters	3/30/89
Refer matter to Department of Justice	4/30/89
File Complaint in District Court	6/5/89
*File Motion for a Preliminary Injunction	7/5/89
Hearing on the Motion	8/1/89
File Interrogatories and Request to Admit	9/1/89
Take Depositions	10/89-1/90
**File Summary Judgment Motion	2/90
Proceed to Trial	3/90

- \* Additional sampling of facitlity is in the process of being secured the results of which may bolster consideration of a motion for a preliminary injunction as discussed on page 17.
- \*\* If a preliminary injunction motion is not considered necessary, summary judgment motion(s), may be made earlier.



From M. H. Clar TO: SWEEB

JAN 1 5 1988

OFFICE OF ENFORCEMENT AND COMPLIANCE MONITORING

SUBJECT:

Federal Register Notice Interpreting Impact of American Mining Congress v. EPA, 824 F.2d 1177 (D.C. Cir. 1987), on Agency's Authority to Regulate Recycled Materials as

Solid Wastes Under RCRA

FROM:

Edward E. Reich by timen L. Lifer Associate Enforcement Counsel for Waste

TO:

Regional Counsels, Regions I-X

Following up on my December 21, 1987, memorandum to you discussing the <u>American Mining Congress</u> ("AMC") decision in the context of the unfavorable ALJ decision in <u>In re Lee Brass</u>, RCRA-85-53-R (Sept. 30, 1987), I have attached a copy of a recently published <u>Federal Register</u> notice that explains how EPA interprets the AMC decision to alter the Agency's authority.

The attached notice (53 Fed. Reg. 519, January 8, 1988) states that the court in AMC invalidated EPA's authority to regulate secondary materials that are reused in an on-going continuous manufacturing process. More importantly for enforcement purposes, the notice states that the court did not invalidate EPA's authority to regulate recycling "where the recycling activity itself is characterized by discarding," 53 Fed. Reg. at 520, or where it involves a discontinuous process. See, e.g., 53 Fed. Reg. at 522. The attached January 8th notice provides specific examples of the types of recycling activities remaining within EPA's RCRA authority, and examples of recycling activities the Agency no longer has authority to regulate. In short, we believe that the court invalidated only a very narrow part of our authority.

Those portions of the RCRA regulations requiring revision as a result of the court's decision are identified and discussed in the notice. The Agency is seeking public comment on the proposed regulatory changes. However, EPA is not reopening for public comment those portions of the existing rules not requiring modification. Therefore, although the final rule amending the regulations may be modified in response to public comments, we believe that the interpretation in the proposed rule is sound and will remain essentially unchanged.

This area of regulation is very complex, and has been further complicated by the AMC decision. OECM remains committed to helping the Regions adopt a consistent and defensible position regarding EPA's authority to regulate recycled materials as solid (and hazardous) wastes under RCRA. If you are involved in a judicial or administrative matter that raises this issue, please refer to the attached notice as the Agency's current interpretation on this topic. Please feel free to contact me or Gary A. Jonesi of my staff (FTS-382-3072) if you need further guidance.

### Attachment

CC: OECM-Waste Attorneys
 Keith Onsdorff, OECM-Criminal
 Andrew Praschak, Region II, Caribbean Field Office
 Phyllis Perrin, Region IV, Regional Counsel's Office
 Steve Silverman, OGC

### R-2918 Valparaiso, FL [Amended]

By removing the present time of designation and using agency and substituting the following:

Time of designation. Intermittent, 0600– 0100 local time daily; other times by NOTAM 6 hours in advance.

Using agency, U.S. Air Force, Commander, Armament Division, Eglin AFB, FL.

### R-2919A Valparaiso, FL [Amended]

By removing the current boundaries, time of designation and using agency and substituting the following:

Boundaries. Beginning at lat. 30°28'00" N., long. 86°23'00" W.; to lat. 30°28'00" N., long. 85′58'00" W.; to lat. 30°24'00" N., long. 85′56'00" W.; to lat. 30°19'15" N., long. 85′56'00" W.; to lat. 30°19'15" N., long. 86°08'00" W.; to lat. 30°22'00" N., long. 86°08'00" W.; to lat. 30°25'00" N., long. 86°22'26" W.; to the point of beginning.

Time of designation. Intermittent, 0600-0100 local time daily; other times by NOTAM 6 hours in advance.

Using agency, U.S. Air Force, Commander, Armament Division, Eglin AFB, FL.

### R-2919B Valparaiso, FL [Amended]

By removing the present time of designation and using agency and substituting the following:

Time of designation. Intermittent, 0600– 0100 local time daily; other times by NOTAM 6 hours in advance.

Using agency. U.S. Air Force, Commander, Armament Division, Eglin AFB, FL.

### R-2919C Valparaiso, FL [New]

Boundaries. Beginning at lat. 30°22'00" N., long. 86°08'00" W.; to lat. 30°19'15" N., long. 85°56'00" W.; to lat. 30°11'00" N., long. 85°56'00" W.; thence 3 nautical miles from and parallel to the shoreline to lat. 30°15'00" N., long. 86°06'15" W.; to the point of beginning.

Designated altitudes. 8.500 feet MSL to unlimited.

Time of designation. Intermittent, 0600– 0100 local time daily: other times by NOTAM 6 hours in advance.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency, U.S. Air Force, Commander, Armament Division, Eglin AFB, FL

Issued in Washington, DC, on December 22, 1987.

### Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-252 Filed 1-7-88; 8:45 am]

BILLING CODE 4910-13-M

### **DEPARTMENT OF AGRICULTURE**

### Forest Service

#### **36 CFR Part 223**

Sale and Disposal of National Forest Timber; Periodic Payments, Downpayments, and Market-Related Contract Term Additions

AGENCY: Forest Service, USDA.

**ACTION:** Notice: extension of public comment period.

SUMMARY: On November 6, 1987, at 52 FR 43020, the Forest Service published a notice of proposed rulemaking to implement periodic payments required by the Federal Timber Contract Payment Modification Act. Many timber sale purchasers and trade associations have requested additional time to prepare comments on this proposed rule, primarily because of ongoing efforts by the Forest Service and timber industry to develop an updated standard timber sale contract to submit for public comment. Another reason is that they may need additional time to analyze the several other proposed changes to policy and regulations governing Forest Service timber sales open for comment concurrently. The original comment period ended January 5, 1988. To permit these purchasers and the general public a reasonable opportunity to submit their comments, the public comment period is hereby extended by 45 days to February 19, 1988.

DATE: Comments now must be received on or before February 19, 1988.

ADDRESS: Send written comments to F. Dale Robertson, Chief (2400), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: David M. Spores, Timber Management Staff, (202) 447–4051.

Dated: December 30, 1987.

### George M. Leonard,

Associate Chief.

[FR Doc. 88-284 Filed 1-7-88; 8:45 am] BILLING CODE 3410-11-M

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 261

[SWH-FRL-3283-4]

Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste

AGENCY: Environmental Protection Agency.

**ACTION:** Proposal Rule and request for comment.

SUMMARY: On July 31, 1987, a panel of the District of Columbia Circuit Court of Appeals ruled 2–1 that the Environmental Protection Agency (EPA) had exceeded its statutory authority by regulating, or claiming authority to regulate, certain recycled hazardous secondary materials. American Mining Congress v. EPA, 824 F.2d 1177. This notice provides the Agency's interpretation of the court's opinion, and describes the portions of the rules unaffected by the opinion and remaining in force. This notice also proposes amendments to the rules required by the court's opinion. In general, the Agency is proposing to exclude from regulation certain in-process recycled secondary materials in the petroleum refining industry, and certain other sludges, by-products, and spent materials that are reclaimed as part of continuous, ongoing manufacturing processes.

DATES: EPA will accept public comments on the proposal until February 22, 1988.

ADDRESSES: The public docket for this rulemaking is located at Room LG-100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket number assigned to this notice is F-87-SWRP-FFFFF. Persons who wish to comment on the notice should place the docket number on their comments, and provide an original and 2 copies. The EPA RCRA docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling (202) 475-9327. A maximum of 50 pages may be copied from any regulatory docket at no cost. Additional copies cost \$0.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline toll free at (800) 424–9346 (in Washington, DC, call (202) 382–3000). For information on specific aspects of today's notice, contact Michael Petruska, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475–8551.

### SUPPLEMENTARY INFORMATION:

### **Outline of Today's Notice**

I. Background

II. Analysis of the Court's Opinion

A. The Agency's Interpretation of the Court's Opinion—General

B. Portions of the Existing Rules Affected by the Court's Opinion

C. Other Regulations Dealing With Recycling Activities

1. Use Constituting Disposal

- 2. Burning for Energy Recovery and Use of Hazardous Secondary Materials to Produce Fuels
- 3. Reclamation
- 4. Speculative Accumulation
- 5. Inherently Waste-like Materials
- D. The Opinion's Effect on Specific Issues
  1. Secondary Materials Discarded by
  Means Other than Final Commitment to
  - RCRA Disposal Unit

- 2. On-Site Recycling Activities Involving Solid Wastes
- 3. Precious Metals Reclamation
- 4. Scope of the Closed-Loop Exclusion
  III. Amendments to Conform to the Court's
  Decision
  - A. Amendments Concerning Petroleum Refining
    - Use of Oil-Bearing Residuals from Petroleum Refining in the Refining Process
    - 2. Petroleum Coke Produced with Oil-Bearing Hazardous Secondary Materials From Refining
    - 3. Changes in Regulations
  - B. Proposed changes in Scope of Reclamation Provision
- C. Exclusion of Spent Materials Reclaimed in Closed Systems and Returned to the Original Process
- IV. State Authority
- A. Applicability of Rules in Authorized States
- B. Effect on State Authorization
- V. Executive Order No. 12291—Regulatory Impacts
- VI. Paperwork Reduction Act VII. Regulatory Flexibility Act VIII. Supporting Documents

### I. Background

On July 31, 1987, a panel of the United States Court of Appeals for the District of Columbia Circuit held in a 2-1 decision that the RCRA statutory definition of solid waste contained in section 1004(27) of RCRA limited the Agency's authority over hazardous secondary materials destined for recycling to materials that are "discarded". American Mining Congress v. EPA, 824 F. 2d 1177 (D.C. Cir. 1987). More specifically, the court held that the Agency has exceeded its authority insofar as it classified certain in-process streams in the petroleum refining and primary smelting industries as RCRA solid wastes. Today's notice sets out the Agency's interpretation of the portions of its existing rules requiring modification in light of the court's opinion. The Agency is proposing the changes that are necessary to conform the existing rules to the court's mandate. and is seeking public comment on those changes.

### II. Analysis of the Court's Opinion

A. The Agency's Interpretation of the Court's Opinion—General

The Agency views the court's opinion as applying to the "agency's authority to regulate secondary materials reused within an industry's ongoing production process" as solid waste. 824 F. 2d at 1178. See also id. at n.3, describing as "the central issue—whether EPA's interpretation that the term 'discarded material' encompasses materials destined for recycling in an on-going

production process is contrary to the statute".

The facts described in the opinion involved two particular types of inhouse recycling practices in the petroleum refining and mining (primary smelting) industries. Petroleum refineries often take oil-bearing byproducts and sludges from the refining process, and return these materials, either by direct reinsertion into the petroleum refining process or (more normally) return to an oil recovery system ("slop oil") after which recovered oils are returned to the petroleum refining process. These byproducts and sludges are sometimes hazardous (for example, API separator sludge and DAF Float from petroleum refining, both listed hazardous wastes, are sometimes recycled in this way), and, if so, would be classified as hazardous waste under the Agency's existing rules because they are used to produce fuels. The primary smelting industries also frequently recover additional metal values from sludges and byproducts generated in the primary smelting process. This recovery can involve direct return to the smelting process, or recovery in other unit operations. 824 F. 2d at 1181. To the extent these activities involve sludges and byproducts on the lists of hazardous wastes from non-specific and specific sources (§§ 261.31 and 261.32) and the activity occurs outside of a closed-loop reclamation system, they are classified as solid wastes under the existing EPA rules the court considered in its

The court held that "by regulating inprocess secondary materials, EPA has acted in contravention of Congress' intent." 824 F. 2d at 1193. See also id. at n.26 ("we decide that EPA exceeded its statutory authority in regulating inprocess secondary materials"). The court reasoned that by defining solid waste by using the phrase "other discarded material", Congress intended that only secondary materials that were in some sense thrown away, abandoned, or disposed of could be solid wastes. The court acknowledged that certain types of recycling activities remain within the Agency's authority, because they involve a form of discarding. E.g., Id. at n.14 (describing used oil recycling activities). Id. at 1191 and n.20 (describing a metal reclamation operation storing metal-bearing materials in open piles, and a pesticide drum reused as a trash container).

Consequently, the Agency intends to amend its existing rules to state clearly that the rules do not extend to on-going manufacturing operations, particularly those like the refining and smelting

processes that were before the court which are characterized by continuous extraction of material values from an original raw material. 824 F. 2d at 1181. The court's opinion also compels exclusion of certain types of reclamation processes that closely resemble on-going production activities, and the Agency proposes to amend its rules to exclude these activities as well. As will be explained more fully below, secondary materials being recycled in these ways are not being "discarded" under the court's interpretation of the term.

The court's decision does not affect the Agency's authority to regulate as hazardous wastes those secondary materials recycled in ways where the recycling activity itself is characterized by discarding as defined by the court. That is, manufacturing processes (or other types of recycling) involving an element of discard which do not involve secondary materials passing through a continuous, on-going manufacturing process remain within the Agency's jurisdiction. We explain below more specifically how we view these concepts as applying to the present rules.

B. Portions of the Existing Rules Affected by the Court's Opinion

For the most part, EPA's existing rules already distinguish between on-going. in-house types of manufacturing activities and waste management. Indeed, this was the Agency's avowed purpose throughout the involved and protracted series of rulemakings leading to the current solid waste definition. See, e.g., 50 FR at 617 (January 4, 1985). Accordingly, the existing rules specifically exclude the following secondary materials from jurisdiction: hazardous secondary materials that are used directly as ingredients in manufacturing processes to make new products (provided the secondary materials aren't being reclaimed); hazardous secondary materials that are used directly as effective substitutes for commercial products; hazardous secondary materials reclaimed in closed-loop processes; and particular individual types of hazardous secondary materials involved in on-going types of recycling activities-black liquor from the paper industry, spent sulfuric acid used to produce virgin sulfuric acid, and certain closed processes characterized by reclamation followed by return of the reclaimed feedstock to a manufacturing process. See 40 CFR 261.2(e) and 261.4(a)(6)-(8).

In addition, and significantly, the current rules state that byproducts and sludges being reclaimed are not solid wastes unless specifically listed. The

listing process designates these secondary materials as solid wastes after considering specific factors bearing expressly on the question of whether the reclamation activity involves a continuous, on-going process. See § 261.2(c)(3) and 50 FR a 640–41 (January 4, 1985).

The Agency's current rules, however, state that when hazardous secondary materials are used to produce fuels or are contained in fuels, both the secondary materials and the resulting fuels are solid wastes. The court held that true in-process oil-bearing materials in the petroleum refining industry were not solid wastes when continuously reused in the refining process. Such activity, in the court's view, involves continued recovery of hydrocarbon values from crude oil, and the oilbearing residuals, therefore, are not discarded materials. Consequently, the Agency proposes to change its existing rules to state that oil-bearing secondary materials from the petroleum refining process so recycled are not solid wastes. provided there is no other element of discard or disposal characterizing the recycling activity.

The opinion also dealt with recycling operations in the primary smelting industry. The existing rules classify these recycling activities as reclamation processes because they involve recovery of material values contained in the secondary materials as end products (for example, the recovery of lead from primary lead emission control dusts). These reclamation processes may or may not involve solid waste. Thus, in promulgating the existing rules, the Agency noted that many of these reclamation operations would not involve RCRA solid wastes as they could be considered on-going processing of the original ore concentrate. 50 FR at 640-41. Yet the Agency also indicated that certain other reclamation operations involving sludges and byproducts are not part of an on-going production process and involve elements of discard. Such operations could involve, for example. discontinuous and unrelated processes. infrequent reclamation, or disposal through storage on the land. Id.

Because the Agency was unable to develop a self-implementing narrative standard accounting for all of these relevant factors, the final rules state that hazardous sludges and byproducts are solid wastes when they are to be reclaimed only if the sludges and byproducts are listed by the Agency in 40 CFR 261.31. and 261.32 on a case-by-case basis. See § 201.2(c)(3). The existing rules direct the listing

determination to be based on a consideration of the factors contained in the preamble to the final rules relating to whether the sludges and byproducts are utilized in on-going, continuous manufacturing processes. *Id.* 

To bring the Agency's rules on reclamation into conformance with the court's opinion, EPA is proposing to amend the rules to indicate with more particularity the bases for designating sludges and byproducts as solid wastes. and to ensure that materials reclaimed in true on-going manufacturing processes without any element of discard are not considered to be solid wastes. To make this change, the Agency is proposing to list by rule rather than by explanatory preamble the relevant factors for determining whether to designate these materials as solid wastes when they are to be reclaimed. and to indicate in the rule that the ultimate jurisdictional test is whether these materials are being utilized in an on-going continuous manufacturing process.

The court did not overturn the Agency's jurisdiction over material recovery when not characterized by ongoing, continuous production processes. For example, the Agency believes that the following recovery situations could involve the disposal of byproducts and sludges in operations that are not ongoing, continuous production processes. In such circumstances, the Agency could retain jurisdiction under the court's opinion:

1. Spent potliners, containing high concentrations of cyanide, could be disposed of through storage prior to potential recovery of cryolite values (as fluoride) but not for any recycling of the cyanide. This reclamation step is ancillary to the main process (aluminum production), since fluoride is not returned to the process to be recovered as a product (rather, it is a component in the potliner), and the potliners themselves are dissimilar to raw materials used originally. The lack of cyanide recycling indicates a waste treatment objective.

2. A wastewater treatment sludge is generated in an impoundment. It is unfit for recovery until it is dewatered. It can be eventually recycled to the smelting process. The sludge must be reclaimed before it can be returned to the process, and is accumulated initially in a manner unlike normal raw materials (raw materials are not customarily stored underwater), and in a manner tantamount to land disposal (see RCRA section 3004(k)). The court's opinion indicates such circumstances may

involve RCRA solid wastes. The court

specifically refers to similar recovery scenarios as involving solid wastes at 824 F.2d n. 20.

3. Wastewater treatment sludges from a non-smelting process, containing high concentrations of toxic constituents that are not found in ore concentrates and that are not destined for recovery, are disposed of by transfer to a primary smelter for metal recovery. It is possible for such circumstances to give EPA jurisdiction given the element of discard and the lack of an on-going, continuous production process. Moreover, toxic constituents would be discarded because they are not recycled.

### C. Other Regulations Dealing With Recycling Activities

EPA's remaining regulations dealing with recycling activities clearly involve elements of discard as construed by the court. None of these activities consist of on-going manufacturing involving continuous extraction of material values. The court's opinion, therefore, does not require modification of these provisions in the solid waste rules. Thus, the Agency expects the regulated community to continue to comply with the applicable regulations. We explain below the relationship of the court's decision to each class of activity.

1. Use Constituting Disposal. Current EPA regulations state that secondary materials applied to the land or used to produce products that are placed on the land are solid wastes (products produced therefrom are also solid wastes). If the solid wastes are listed, or exhibit a hazardous waste characteristic, they are hazardous wastes. See 40 CFR 261.2(c)(1). Examples of uses that constitute disposal include the use of hazardous sludges as road-base material or as dust suppressants and the use of a wastederived fertilizer placed on the land. These recycling activities meet the court's definition of discard because the use activity is also land disposal.

Hazardous wastes disposed of through uses constituting disposal invariably contain toxic constituents which do not further the use and which are discarded by disposal when the wastes are placed on the land. For example, the dioxin found in Times Beach, Missouri was from used oil mixed with a dioxin-containing byproduct disposed of on the land through use as a dust suppressant. Another example is the disposal of cadmium through the use of the wastederived fertilizers produced from waste K061.

These recycling activities are not ongoing manufacturing processes. When solid wastes are placed on the land. there is no continuous stream of manufacturing process, but rather there is final disposal of the wastes. Accordingly, the Agency believes that this class of activity is properly within its authority and is unaffected by the court's opinion. Therefore, no rule change is necessary, and the Agency is not reopening this portion of the rule to public comment.

(2) Burning for Energy Recovery and Use of Hazardous Secondary Materials to Produce Fuels. Current EPA rules state that when hazardous secondary materials are used directly as fuels or used to produce fuels, both the hazardous secondary material and any fuel produced from these materials are solid wastes, and, if hazardous. hazardous wastes. See 40 CFR 261.2(c)(2). As indicated above, the court held that these provisions could not lawfully apply to conventional inprocess petroleum refining activities occurring at petroleum refineries characterized by continued extraction of material values from crude oil. Thus. secondary hazardous materials from petroleum refining that are used to produce fuels by introducing them into the petroleum refining process would no longer be classified as solid wastes (assuming there is no element of discard relating to this type of recycling as explained in section III.A. below).

The Agency does not view the opinion as affecting any other aspect of the rules relating to burning. As with the use constituting disposal provisions, burning processes for energy recovery often involve disposal of waste through incineration, a classic form of waste management activity. In these processes, hazardous secondary materials are disposed of by burning and releasing the constituents (potentially indiscriminately) into the air. Congress equated burning for energy recovery and incineration when promulgating section 3004(q) of RCRA as part of the 1984 amendments. (See H.R. Rep. No. 198, 98th Cong. 1st Sess. 39-40.) The court did not overturn regulation of such burning activities but only on-going manufacturing activities. When a generator takes its spent sovlent from a degreasing operation and burns it in its boiler, for example, it is not engaged in an on-going manufacturing process, but rather is disposing of a waste from one process (e.g., solvent from degreasing) by burning it in a second unrelated process. Similarly, when a plant takes hazardous still bottoms that are unsuitable for direct use as a chemical intermediate and burns them to recover residual

energy, the hazardous constitutents are disposed of as wastes by destruction, just as if they were incinerated. Moreover, the manufacturing utility of the material has come to an end, and the manufacturing activity has concluded. In sum, an energy recovery step is not typically an integral part of the basic manufacturing process, but rather is ancillary and involves disposal of solid waste.

Accordingly, with the exception of inhouse recycling activities in petroleum refining, the Agency does not view any of its rules related to burning for energy recovery and the use of hazardous secondary materials to produce fuels as being affected by the court's opinion. The Agency therefore only proposes to amend the rules insofar as they affect the petroleum refining industry.

One further issue involving burning merits discussion. Under the Agency's current rules, some forms of burning do not involve recycling at all. When burning occurs in a boiler or industrial furnace for the dominant purpose of destruction, the activity is classified as incineration. Not only are these incinerated materials solid wastes, but the act of incineration is presently subject to regulation under Subpart O of Parts 264 and 265. See 40 CFR 264.340(a)(2) and 265.340(a)(2). Obvious factors bearing on whether burning is for the purpose of destruction, and so is presently subject to regulation as incineration are: (a) Whether the operator of the device is paid to burn wastes and the percentage of income derived from burning wastes as opposed to producing a product; (b) whether the wastes are selected to meet specifications related to a recycling purpose or rather are simply solicited and accepted indiscriminately; (c) the energy value of the wastes (if burning is for energy recovery); (d) how much energy or material value each waste contributes to the recycling purpose; (e) whether each waste burned is as effective for the claimed recycling purpose as the raw materials normally processed in the device; and (f) whether the toxic constituents in the waste contribute to the recycling objective or are simply being destroyed. Other factors are discussed at 50 FR 638 (January 4. 1985) and 52 FR 17013 (May 6. 1987). Persons burning the waste have the burden of showing that each waste burned is burned for a legitimate recycling purpose and not for destruction. 40 CFR 261.2(f).

3 Reclamation. (a) Reclamation
Involving Spent Materials. Reclamation
activities under the Agency's rules are
of two types: regeneration of materials

or materials recovery therefrom. See 40 CFR 261.1(c)(4) and 261.2(c)(3). As discussed earlier, this has always been the area of recycling most difficult to classify because certain reclamation activities involve on-going production activities. while others are forms of waste management.

The Agency's rules deal with the problem of classification by differentiating among the types of materials being reclaimed. (See Table 1 in § 261.2(c)(3).) The exact classification is between secondary materials which are previously used, and are used up and no longer usable ("spent materials"), and previously unused residual materials ("sludges and byproducts"). As explained in section II.B. above, sludges and byproducts are more likely than spent materials to be involved in on-going manufacturing operations. The existing rules thus classify sludges and byproducts as solid wastes on a case-by-case basis based on factors which distinguish on-going manufacturing from waste management. Spent materials requiring reclamation. on the other hand, are not directly usable in on-going manufacturing processes, because, by definition, they are no longer usable and must first be restored to a usable condition. There is no continued utilization of material values, though there may be potential for recovery of something usable from a used up or spent material. Thus by definition, these materials are no longer available for use in continuous, on-going manufacturing processes, and as such, are disposed of from these processes even if the reclamation activity occurs at the site of generation (with one exception discussed below).

Of course, when a generator actually disposes of a spent material by sending it to an unrelated reclaimer, the spent material is a solid waste. See 824 F. 2d at n. 14. Examples of waste disposal activities for spent materials include spent solvent reclamation, used oil rerefining, or recovery of spent catalyst.

The only exception to this principle is where the reclamation operation involves closed, continuous processes where reclaimed materials are returned directly to the initial manufacturing process and the entire operation is connected with pipes or other comparable means of conveyance, and there is no element of disposal involved (such as storage in an impoundment). The Court's opinion requires exclusion from regulation in this situation because there is no removal from an on-going process and the court's decision holds that no materials can be considered to be discarded. The Agency proposes to

change its existing rules to exclude such situations.

(b) Reclamation Involving Sludges and Evproducts. As discussed in section II.B. above, the current EPA rules indicate that listed sludges and byproducts are solid wastes when they are reclaimed (in other than closed-loop systems as defined in the rules). This listing determination is based on consideration of a range of factors which evaluate the question of whether the materials remain in an on-going, continuous manufacturing process.

As noted previously the Agency proposes to amend these rules to indicate that the Agency lacks authority to regulate secondary materials reclaimed in this manner, and to indicate explicitly what the relevant factors are in making this determination.

4. Speculative Accumulation. The Agency's rules state that hazardous secondary materials that are not solid wastes for any other reason become solid wastes when they are accumulated without being recycled for one year without 75 percent of the material being recycled during the one year period. See 40 CFR 261.2(c)(4). Petitioners did not challenge this provision in the American Mining Congress litigation. The Agency has concluded that situations satisfying the speculative accumulation criteria involve elements of discard since the materials have been disposed of, are not part of an on-going production process, and are not being (and are unlikely to be) recycled. Secondary materials disposed of through storage for this length of time without recycling simply cannot be characterized as in-process materials. The Agency does not believe this provision requires alteration, but requests comment on this interpretation.

It should be noted that the rules provide a variance allowing persons accumulating speculatively to demonstrate that they are not storing solid waste. 40 CFR 260.31(a). This provision accommodates those unusual situations where there is prolonged storage without recycling but the material being stored might legitimately be considered not a solid waste. 50 FR 652-54 (January 4, 1985). There have been no applications for a variance under this provision since the rule was adopted, supporting the soundness of the existing one year 75 percent test.

5. Inherently Waste-like Materials. Section 261.2(d) states that those types of secondary materials listed by EPA after consideration of specified criteria are solid wastes regardless of how they are recycled. The only wastes that the Agency has so designated are the listed lioxin-containing wastes (F020-F023, 026, and F028). The factors the Agency

is required to consider in designating secondary materials as solid wastes under this section address the element of discard necessarily involved in recycling these materials (e.g., whether the material is typically discarded, or whether it contains unusual hazardous constituents not found in corresponding virgin material for which the secondary material substitutes which do not contribute to the recycling process, and whether the recycling process may pose a hazard to human health and the environment).

The court's opinion does not affect this provision. The factors upon which the Agency would base a decision are directly related to whether materials are being disposed of, thrown away or abandoned, i.e., discarded. Materials must either be typically disposed of, or contain hazardous constituents which are disposed of by virtue of not contributing to the recycling process. The dioxins in the dioxin-containing wastes serve as an example. Accordingly, the Agency is not proposing to amend this provision and is not soliciting any comment on it.

D. The Opinion's Effect on Specific Lisues

1. Secondary Materials Discarded by Means Other Than Final Commitment to a RCRA Disposal Unit. The court did not equate discard with final disposition in a RCRA disposal unit. Rather, the court held the term "discarded materials" includes materials abandoned, thrown away, or disposed of, and does not include secondary materials recycled in on-going, continuous manufacturing operations. Indeed, some of the court's definitional examples of discarded materials are secondary materials disposed of by means other than final commitment to RCRA disposal units-namely, used oil destined for recycling, waste piles involved in reclamation placed directly on the land, and recycled pesticide drums placed on the land. 824 F.2d n. 14 & 20.

Equating discard with final disposition in a RCRA disposal unit would not accord with industrial disposal practices and would be contrary to RCRA's purposes.

Hazardous secondary materials are rarely, if ever, committed for final disposition to a RCRA disposal unit and then retrieved for recycling. Thus, to the extent the court identified specific discarded materials in certain recycling processes and uses, the court could not have intended discard to mean final disposition in a RCRA disposal unit.

RCRA's definition of the term "disposal" includes a broader range of activities with the potential for environmental releases than final commitment to RCRA disposal units. RCRA section 1004(3). Moreover, RCRA emphasizes the Agency's duty to regulate solid wastes involved in recycling activities by requiring the Agency to control the burning of hazardous wastes, the recycling of used oil, the use of waste as dust suppressants, the recycling and reuse of wastes by small quantity generators. and generally, any recycling involving placement of hazardous waste on the land. Id. at section 3004(g), 3014. 3004(l), 3001(d), and H. Rept. No. 198, 98th Cong. 2d Sess. 48.1 Equating discard with final disposition in an RCRA disposal unit would render these specific congressional directives meaningless.2

<sup>1</sup> The estimated volume of such hazardous wastes underscores the importance of distinguishing between discard and final disposition in a RCRA disposal unit. For example, EPA has estimated that over 2.5 million tons of used oil are recycled annually of which virtually none was previously committed for final disposal. (A few Superfund remedial actions resulted in small volumes of previously disposed used oil being recycled.) The Agency has also estimated that 440 million gallons of spent solvents are reclaimed annually (52 FR at 3756 (February 5, 1987)) none of which, to the Agency's knowledge, was previously thrown away in RCRA disposal units. An estimated one million tons of hazardous secondary material residues are burned annually or incorporated into fuels, 52 FR. 17,023 (May 6, 1987). EPA is unaware that any of this material was previously committed for final disposal in RCRA disposal units. In addition, the Fertilizer Institute indicated in public comments to the Agency's 1985 rulemaking on recycling that its members use upwards of 41,000 tons of byproducts and sludges as ingredients in fertilizers annually. many of which are hazardous wastes and none of which are first landtilled or otherwise committed for final disposition in RCRA disposal units.

\* More specifically, the statute and its legislative history mandate regulation of secondary materials not first committed for final disposal. Section 3004(q) commands explicitly that the Agency regulate burning of commercial chemical products which are not themselves fuels and which are not previously used, much less used and committed for final disposition. Section 3014(c) requires EPA to create an elaborate regulatory structure to prevent used oil which is a hazardous waste from being thrown away and to regulate recycled used oil. including in-house generator recycling. See section 3014(c) (B) (i) (II) ("recycles such used oil at one or more facilities of the generator " " "). Section 3004(h) (2) indicates that the Agency may establish a different effective date for a prohibition from land disposal of a hazardous waste on the date when alternative protective recovery technology is available. This land ban applies to hazardous wastes not yet committed to final disposition in RCRA disposal units.

The legislative history to the waste as fuel provisions (section 3004 (q)) also states Congress intended to close "a major deficiency in the present Subtitle C regulations" which allows "10 to 20 million tons of \* \* \* hazardous waste" to be burned annually. S. Rep. No. 284 at 36; H.R. Rep. No. 198 at 39 (using the figure 10 to 15 million tons). These directives, volume estimates, and enunciations of determination to close off regulatory loopholes would have no meaning if applied solely to the

Continued

Accordingly, EPA does not read the opinion to indicate that secondary materials must first be committed for final disposition in RCRA disposal units before they can be solid wastes. Thus, aside from the types of closed processes discussed below, recycling activities involving the discarding of secondary materials may remain within the Agency's RCRA Subtitle C jurisdiction.

Agency's RCRA Subtitle C jurisdiction.
2. On-Site Recycling Activities Involving Solid Wastes. The court's opinion does not materially distinguish off-site from on-site recycling. As noted previously, on-site recycling activities may involve solid wastes under certain circumstances. The court found that materials remaining in a continuous ongoing manufacturing operation are not discarded. The mere fact that recycling occurs on-site, however, or for that matter is conducted by the initial generator of a secondary material, does not necessarily mean that the activity is part of one on-going manufacturing operation. On-site or single generator recycling activities can continue to be characterized by elements of discard and so remain within the Agency's Subtitle C jurisdiction. The following examples make this point:

a. A degreasing operation disposes of a spent degreasing solvent, which is removed from the production process (i.e., not in a closed process), taken to an on-site distillation unit, and regenerated. Here, not only is the spent solvent being disposed from the operation in which it is generated, but it is not part of a manufacturing process at all. There is no continued extraction of material values from a raw material, but rather it is a useless waste until restored through treatment to a usable condition.

b. A generator generates an ignitable byproduct which it blends with fuel oil and disposes of through burning in an on-site boiler. This activity does not involve materials passing through a continuous on-going manufacturing process. Rather, a byproduct of a waste generating process is being disposed of by burning.

c. A generator generates a hazardous wastewater treatment sludge which is eventually returned to the manufacturing process for metal recovery. The sludge is disposed of through storage in a surface impoundment prior to its return. The storage in a surface impoundment is disposal of solid waste because it involves placement on land with potential entry into the environment. Processes where such materials are

generated and stored in underwater ponds or lagoons are not part of continuous on-going manufacturing processes and may involve disposal. Such sludges also must normally be reclaimed before they are reusable, a further indication of lack of process continuity. Impoundments, moreover, are not process devices, but rather function as wastewater treatment units.

The court's decision allowing for regulation of on-site recycling processes that involve discarding accords with the statute and its legislative history which likewise make clear that Congress contemplated and directly commanded the Agency to regulate many on-site recycling activities. For instance, the legislative history with respect to burning hazardous waste-derived fuels indicates that Congress intended that "the Administrator, in controlling the burning of waste and the emissions from facilities that burn such wastes, may not make distinctions solely on the basis of whether the facility is on the site of the generator or is an off-site facility." S. Rep. No. 284 at 38: the same language is in H.R. Rep. No. 198 at 41-42. The text of the statute itself refers (in the context of authorizing certain exemptions for facilities burning de minimis quantities of hazardous waste fuels) to regulation of "wastes \* \* \* burned at the same facility at which such wastes are generated." RCRA section 3004(q)(2)(B).

The following provisions likewise indicate specifically that on-site recycling activities can involve hazardous wastes: section 3004(r)(2) (A) and (C) (generation and reinsertion onsite of oil-bearing wastes into the petroleum refining process at petroleum refineries classified as SIC 2911: a facility that refines crude oil); section 3014(c)(2)(B)(i)(II) (controlling used oil recycling activities at a used oil generator's facility); section 3004(q)(2)(A) (use of oil-bearing wastes "at petroleum facility at which such wastes were generated").

The Agency believes these provisions make clear that there is no automatic on-site/off-site distinction. The Agency notes, however, that the existence of on-site recycling is a relevant element in assessing whether a recycling process is really an on-going manufacturing activity or otherwise involves discarded materials. The Agency accordingly does not propose incorporating any such automatic distinction in its rules.

(3) Precious Metal Reclamation. Under the Agency's rules, secondary materials being reclaimed for their precious metal content are classified as solid wastes in the same way as other secondary materials being reclaimed: spent

materials so reclaimed are always wastes, and sludges and byproducts so reclaimed must be specifically designated as such (by listing) to be wastes. The court's ruling does not change this classification system. The opinion did not refer specifically to precious metal reclamation, and normal precious metal recycling operations are not characterized by continuous ongoing manufacturing processes, but rather involve elements of discard in the sense that materials are disposed of from an industrial process. These operations involve an independent reclaimer procuring waste materials generated by another person from another industry and recovering metal values therefrom. An example is recovery of precious metals from electroplating wastes. This is not one continuous process, but two unrelated ones, with the electroplater disposing of his wastes. This type of operation is analogous to used oil recycling operations described in n.14 of the court's opinion. Specifically, the court noted that when a generator sends used oil to be recycled at a different facility. the generator is discarding the oil by sending it to be recycled by a different party. The generator was disposing of the material by giving up control over it. Similarly, when precious metals in wastes from one industry are eventually recovered by another industry's process. the generator is also discarding these materials.

Accordingly, the Agency does not propose to amend the existing rules relating to classification of secondary materials destined for precious metal reclamation. The Agency notes that precious metals reclamation is subject to a set of special, reduced standards at 40 CFR Part 266, Subpart F. Further, EPA has received a petition from the International Precious Metals Institute (IPMI) requesting an exemption from the manifest requirements. EPA requests comment on this petition from any interested party.

(4) Scope of Closed-Loop Exclusion. The Agency's existing rules provide that hazardous secondary materials that are reclaimed in closed-loop systems are excluded from being solid wastes. (See 40 CFR 261.2(e)(1)(iii).) A closed-loop system is one where secondary materials are returned for reclamation (i.e., for contained material values to be recovered from them) as feestock to the primary process which generated them without first being reclaimed. Secondary materials reclaimed in tanks and then returned to the original process as feedstock are also excluded when the system is connected entirely by pipe.

nearly non-existent practice of buring hazardous tecondary materials that are committed to final disposition in RCRA disposal units.

(See 40 CI'R 261.4(a)(3).) The court's opinion does not affect these provisions. Accordingly the Agency proposes no changes to this Section.

### III. Amendments to Conform to the Court Decision

A. Amendments Concerning Petroleum Refining

1. Use of Oil-Bearing Residuals from Petroleum Refining in the Refining *Process.* The court held that the Agency had exceeded its authority in regulating on-going fuel production activities in the petroleum refining industry. These activities involve situations where crude oil is refined, and oil-bearing residues from that refining process are returned for further refining as part of one continuous and on-going process. The oil-bearing residues are sometimes reinserted directly into the petroleum refining process, but more often are placed in a centralized recovery system ("slop oil system") where oil is recovered and returned to the petroleum refining process. Materials so recycled. the court held, are not discarded and so cannot be solid wastes.

In light of this holding, EPA is proposing to exclude from jurisdiction petroleum refining residues that are recycled in this manner. The salient elements of the exclusion are:

 The oil-bearing residue must be generated and reinserted onsite;

 It must be inserted into the petroleum refining process; and

 The process must be on-going and continuous, and not be characterized by any elements of discard.

We believe these conditions accurately reflect the Court's holding for

the following reasons.

a. On-site. The Agency is proposing to limit this amendment to situations where the oil-bearing residue is generated and reinserted onsite because interpreting the court's holding as excluding from the solid waste definition all hazardous oil-bearing secondary materials brought to a petroleum refinery from off-site would have the unintended and improper effect of rendering a statutory provision, RCRA section 3004(r)(3), without meaning. This provision exempts from the hazardous waste fuel warning label requirement "fuels produced from oily materials resulting from normal petroleum refining, production, and transportation practices" where the oily materials are reintroduced into the petroleum refining process under enumerated circumstances. This provision differs from section 3004(r)(2) as it applies to oily materials brought to a refinery from off-site. 50 FR 28715 (July 15, 1985). Since Congress refers, in section 3004(r)(1), to such materials as potential "hazardous wastes identified or listed under section 3001" (i.e., a subset of solid waste), the Agency must include such materials within the solid waste definition. The Agency also notes this reading does not suffer from the problem of circularity that concerned the court in that the provision applies to "oily materials", not to wastes. Applying the court's reasoning, these materials are not part of an on-going, continuous petroleum manufacturing process, but rather have been disposed of, 824 F.2d at n.14. These materials are, therefore. solid wastes.

Finally, with respect to section 3004(r)(3), under the Agency's current rules, solid wastes that are indigenous to a manufacturing process cease to be solid wastes when they are returned to that process for recycling. 50 FR 600 (January 4, 1985); 50 FR 49167 (Nov. 29, 1985); 52 FR 16989-99 (May 6, 1987). This would also be the case for the oilbearing materials mentioned in section 3004(r)(3). Consequently, when such materials are reinserted into the petroleum refining process, they would

cease to be solid wastes.

b. Reinsertion Must be Into a Refining Process. The court directed the Agency to exclude from the solid waste definition those secondary materials passing through a continuous petroleum refining process. Petroleum refining processes are those primarily producing gasoline, kerosene, lubricants and fuel oils from crude petroleum through distillation of crude oil or intermediates (gas oils, naptha, etc.), cracking and other processes (this description paraphrases the SIC 2911 definition). Accordingly, the Agency proposes to exclude secondary materials reinserted into these ongoing refining processes.

However, use of oil-bearing hazardous residues in a non-refining process does not fit the court's description of an ongoing manufacturing process. Rather, such operations resemble the activities involving used oil mentioned in footnote 14 of the opinion, which the court indicated were examples of discarding. There, used oils were taken, reclaimed (i.e., some contaminants were removed) in a process different than the one that generated them, and used as fuels. Similarly, when oil-bearing hazardous residues are taken to a non-refining process—for example a process that uses simple settling to remove bulk solids and water—the process is exactly analogous to the one involving used oil except that a different type of oilbearing material is involved.

c. There Must Be No Element of Discard Involved. The Agency also proposes that to be excluded from jurisdiction, hazardous secondary materials from petroleum refining must be returned to the refining process in a way that involves no element of discard as the court construed the term. For example, secondary materials stored in a surface impoundment would be within the solid waste definition because they have been disposed of. By placing the material on the land in a way that contaminants can be released into the environment, the practice meets the definitions of disposal in RCRA sections 1004 and 3004(k). The court also characterized such recycling practices involving placement on the land (whether for storage or end disposition) as disposal and indicated that the materials so managed were solid wastes. 824 F.2d at n.20. And as discussed earlier, recycling activities may involve disposal through storage. Thus, if secondary materials are stored underwater in lagoons or ponds, such materials have been disposed of and are RCRA solid wastes. Indeed, the impoundments themselves are wastewater treatment units, not steps in a manufacturing process. Under today's proposal, petroleum refining oil-bearing hazardous secondary materials are solid wastes if they are disposed of through storage before recycling. Units in which the materials are stored consequently would continue to be regulated units. However, as stated earlier, when such materials are removed from such units and reinserted into the petroleum refining process, they would cease to be solid wastes.

2. Petroleum Coke Produced With Oil-Bearing Hazardous Secondary Materials From Refining. The Agency proposes to exclude from the solid waste definition oil-bearing secondary materials from petroleum refining used to produce petroleum coke at a refinery. provided there is no element of discard involved in the recycling practice as explained above. This activity is also characterized by on-going utilization of hydrocarbons contained in the original crude oil and so comes within the scope of the court's opinion.

Such secondary materials are not excluded if they are disposed of through storage preceding reintroduction to the coking process. The Agency also notes that failure to exclude secondary materials so disposed of would render RCRA section 3004(q)(2)(A) meaningless. This provision applies only when petroleum refinery wastes are converted into coke at the facility at which they are generated, i.e., a petroleum refinery. If the Agency were to exclude from jurisdiction secondary

materials disposed of through storage, there would be no materials to which this provision would apply. In addition, the legislative history to this provision indicates special concern for, and directs regulation of petroleum refining wastes stored in impoundments before being used in the coking process. S. Rep. No. 284 at 39,

3. Changes in Regulations. The Agency is thus proposing two regulatory exclusions from the solid waste definition. The first exclusion is for secondary materials which are generated on-site and reinserted into the petroleum refining process (which language should be understood to include initial reinsertion to the slop oil system followed by reinsertion into actual refining processes) at conventional petroleum refineries provided the materials are not disposed of through storage in a manner involving placement on the land before being so recycled (or are not disposed by being accumulated speculatively before eventually being recycled). As noted previously, such storage is disposal (a type of discard), and the impoundment is a regulated unit. Indigenous oilbearing sludges removed from the impoundment and reinserted in the process would, however, cease being solid wastes upon reinsertion.

The second proposed regulatory change involves oil-bearing hazardous secondary materials from petroleum refining which are used to produce petroleum coke at the refinery generating the material. This exclusion likewise would not apply when disposal through storage (involving placement on the land), precedes recycling or when the secondary materials are accumulated speculatively.

### B. Proposed Changes in Scope of Reclamation Provisions

As previously discussed, the Agency's existing rules indicate that hazardous spent materials being reclaimed are always solid wastes. But sludges and byproducts are only solid wastes if they are specifically and affirmatively designated as solid and hazardous wastes through the listing process. 40 CFR 261.2(c)(3). The factors used by EPA to justify listing a sludge or byproduct destined for reclamation as solid wastes are currently not set forth in the rule, but rather in the explanatory preamble. These factors are:

How frequently the material is recycled on an industry-wide basis, whether the material is replacing a raw material and the degree to which it is similar in composition to the raw material, the relation of the recovery practice to the principal activity of the facility, and whether the secondary material is managed

in a way designed to minimize loss—all of which show that the material is handled as a commodity. (See 50 FR at 641: January 4, 1985.)

Consideration of the factors is for the purpose of determining whether the normal means of reclaiming the sludge or byproduct resembles a continuous, on-going production process. *Id.* 

The rules for spent materials, in the Agency's view, are for the most part unaffected by the opinion because spent materials are no longer useful, and so, by definition, are not involved in a continous production process and are disposed of. These discarded wastes must be treated before they can be put back to use. (section III. C. of this preamble describes one exception to this general principle.)

With regard to sludges and byproducts, the Agency's existing rules for reclaimed sludges and byproducts already resemble the standard set out in the court's opinion. Yet to make the rules more clearly consistent with the court's opinion, the Agency proposes to amend the rules to indicate that the object in designating sludges and byproducts as solid wastes via listing is to distinguish true on-going manufacturing processes from discontinous waste management activities characterized by elements of discard.

To do so, we are proposing to make two changes in the existing rules. The proposal makes explicit in the regulation itself the factors used to designate reclaimed sludges and byproducts as solid wastes, and the proposal indicates that the ultimate standard in making a decision is whether reclamation of the material is part of a continous on-going manufacturing process. The factors the Agency would consider in making this determination are the same as those described in the preamble to the final regulation.

Since the Agency fully explained its rationale for this choice of factors when it promulgated the final rule in 1985, only a short additional explanation is required here. These factors all bear on a regulatory determination of whether a particular material is discarded. The fact that the sludge or byproduct at issue is typically disposed of rather than recycled bears on whether a material is discarded or intended for discard. The second factor-whether the material is replacing a raw material-indicates that the material would be utilized further in a primary process, an indication of process continuity.

The third factor, the relation of the recovery practice to the principal activity of the facility, is also relevant. Where sludges and byproducts are

returned not to the principal manufacturing process at a facility, but rather to an ancillary recovery step. there is a potential element of discard about the activity. The material is no longer suitable for continued use in the manufacturing process, but must set aside for some other purpose. As previously discussed, an example is cryolite recovery from spent potliners in the primary aluminum industry, an activity similar to the recycling activities described as involving waste management in footnote 14 of the court's opinion in that a material taken from a process is no longer used in the process. and so is discarded when sent to a different recovery operation. (Other factors, perhaps more important, also indicate that this activity could involve a solid waste. That is, spent potliners contain high concentrations of cyanide which is not recycled—indicating a waste treatment objective-and potliners are typically piled in the open before being recycled.)

The final factor involves the means of handling sludges and byproducts before they are to be reclaimed. If these materials are stored securely so that hazardous constitutents are not likely to be released to land, air or water, their status as valuable, in-process materials is confirmed in an objective way. On the other hand, if the manner if storage meets the RCRA definition of disposal i.e., placed on the land as in an impoundment or an unenclosed pilethe activity involves discard (see RCRA section 3004(k)). Consequently, this factor is certainly relevant in determining whether sludges and byproducts are wastes when reclaimed. As noted earlier, the opinion supports this position. 824 F.2d at n.20.

In addition to the factors discussed. above relating to whether reclamation occurs as part of a continuous manufacturing process, the proposed rule also contains an important consideration to be used to distinguish reclamation activities from waste treatment. This is the secondary material's similarity to the raw material it is replacing, both in terms of material value to be recovered and concentration of toxic constituents. For example, an emission control dust from primary lead production sent to a different lead smelter but containing as much lead. and the same toxic constituents, as ore concentrate, is much more likely to be involved in a single, continuous production process than a sludge from an unrelated industry (for example. electroplating) which contains less recoverable metal than the virgin ore concentrate and (more importantly)

significant concentrations of toxic constituents not normally found in the ore concentrate. Most importantly, these other hazardous constituents are normally not recovered, and so are typically discarded by the process. These materials are not only discarded, but their presence often indicates that the recycling activity is largely a waste treatment process.

Finally, there may be situations where the Agency has designated a sludge or byproduct as a solid waste via listing but the material at a particular facility is acutally being reclaimed in a manner resembling on-going production without discard. For example, if the Agency were to list a particular slag from primary lead smelting because it is typically disposed of, is normally stored in open piles for long periods before recovery, and contains low amounts of lead compared to normal ore concentrate, but at a particular facility the slag is stored in storage bins, is typically shipped to another lead smelter within a short time of generation, and is unusually lead rich. the particular slag would not be deemed to be discarded. This possibility is remote, given that the existing closedloop exclusion will already exclude most or all of the situations where listed sludges and byproducts are truly involved in on-going production. To allow for the possibility, however, we are also proposing to amend the rules today to indicate that any person with a listed sludge or byproduct destined for reclamation in a primary process not already excluded under the closed-loop provision can show that the sludge or byproduct is not discarded because it is involved in a continuous manufacturing process. This provision would be selfexecuting, and so does not require prior petition to the Agency. However, the burden of proof is on the person making this claim (§ 261.2(f)), and the demonstration would have to be based on the same factors the Agency would consider. In this regard, we note that the factor to be given principal weight in evaluating such a claim is how the materials are stored before being reclaimed. If the manner of storage involves disposal (i.e., involving placement on the land) it would be ineligible for exclusion under this provision. Only in unusual circumstances (storage in an enclosed pile for example) might the Agency accept such a claim. A demonstration would also have to address whether there are toxic constituents present which are not normally found in the corresponding virgin material and

whether such toxic constituents are reclaimed or are discarded.

C. Exclusion of Spent Materials Reclaimed in Closed Systems and Returned to the Original Process

The final exclusion we are proposing in today's rules is for hazardous secondary materials that are reclaimed in closed systems followed by return of the reclaimed material to the original process. An example would be spent solvents that are stored and reclaimed in devices that are connected by pipes followed by return of the reclaimed solvent to the original process for further use. Another example is the regeneration of spent acid at steel plants which is sent to the original process for further use, where the entire operation occurs in tanks and/or industrial furnaces and the operation is connected by pipes. Under these circumstances, the spent material is not discarded. There is no element of discard perceptible when materials are reclaimed in these closed systems: there is just one continuous

The Agency indeed has already excluded a subset of these situations. See § 261.4(a)(8) (July 14, 1986), excluding from jurisdiction secondary materials which are reclaimed and returned for reuse in a production process and the reclamation system is closed in the sense of only tank storage being involved, the system is connected with pipes or other enclosed means of conveyance, the reclamation does not involve controlled flame combustion, accumulation time never exceeds 12 months, and the reclaimed material is not used to produce a fuel or a material that is recycled by being placed on the land. The exclusion proposed today would slightly extend this principle to cover situations where the reclaimed material is returned to the original process not as a feedstock but for some other purpose such as a degreasing agent. (The Agency suggested that such a change might be appropriate in the rulemaking on hazardous waste tanks. 51 FR 25442 (July 14, 1986).)

Although the court's opinion did not deal explicitly with this type of reclamation, we have concluded that the court's rationale applies to these closed reclamation systems. The reclamation of spent materials is not precisely like the petroleum refining and mining (smelting) processes discussed in the opinion because the latter processes involve continued extraction of hydrocarbon or metal values from secondary materials as part of on-going manufacturing processes, while reclamation of spent materials involves recovery of the same

material (e.g., a solvent). However, EPA notes that in some cases, spent materials (or other hazardous secondary materials) are reclaimed continuously (or nearly so), and the reclamation process is an integral part of the manufacturing process. In these cases, provided there is no element of discard. EPA has concluded that the secondary material being so reclaimed is not a solid waste. We are therefore proposing to amend § 261.4 to exclude spent materials being reclaimed in closed systems, subject to certain conditions specifying the nature of the closed system.

Today's rule thus proposes to exclude from jurisdiction hazardous secondary materials that are reclaimed and returned to the original process (as these terms are explained in 51 FR 25442 and 50 FR 640 (July 14, 1986 and January 4, 1985) provided that only tank storage is involved and the entire process through completion of reclamation is closed by being entirely connected with pipes or similar enclosed conveying devices. Like the existing exclusion in § 261.4(a)(8), today's proposal does not apply when there are elements of discard involved in the recycling process. Thus, if secondary materials accumulate for extended periods without being reclaimed, the process is not continuous because recycling is not occurring and the materials have been disposed of through storage. The 12-month period specified in existing rules, which proved non-controversial when adopted for other types of tank systems, appears to be an appropriate time period to gauge overlong accumulation. (Note that an owner or operator claiming this exclusion must keep sufficient documentation to show that his operation meets the conditions of the exclusion—in this case that his storage does not exceed 12 months.) See § 261.2(f)

Second, the rule proposed today would not exclude situations when the reclaimed material is to be burned for energy recovery or placed on the land. Processes where secondary materials are burned for energy recovery or are used to produce fuels, or materials that are applied directly to the land are not within the court's view of in-process, ongoing manufacturing. (The condition in existing § 261.4(a)(8)(ii) likewise is intended to retain jurisdiction over recycling activities involving burning for energy recovery. 51 FR 25442 Col. 3.) These provisions would have little meaning if they could be avoided by the simple expedient of connecting a unit burning wastes for energy recovery to a tank via piping. Not only are these

burning or land placement activities themselves disposal, but the statute specifically addresses on-site waste burning activities and commands their regulation. See section 3004(q)(2)(B); see also sections 3004(q)(2)(A), 3004(r)(2), and 3014(2)(B)(i)(II). Similarly, if the materials are being incinerated, they are not being recycled at all and so would be disposed of via destruction. The proposed rule consequently also indicates that the exclusion does not apply when hazardous secondary materials are piped to incinerators.

### IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State. and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

Today's proposed amendments are not imposed pursuant to HSWA. The rule changes, therefore, will become effective immediately only in those States without interim or final

authorization, not in authorized States. The effect of the rule changes on State authorization is discussed next.

### B. Effect on State Authorizations

Today's rule, if adopted as final, will not be effective in authorized States since the requirements are not being imposed pursuant to HSWA. Thus, the requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State laws.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval. However, it should be noted that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program. States are not required to modify their programs. See 40 CFR 271.1(k). The amendments proposed today reduce the scope of the existing Federal requirements. Those provisions appear in 40 CFR 261.2 and 261.4. Therefore, authorized States will not be required to modify their programs to adopt requirements equivalent or substantially equivalent to the provisions proposed today.

However, as noted above, States are required by § 271.21 (51 FR 33722) to revise their programs to reflect Federal program changes. A number of States qualified for final authorization prior to being required to adopt the redefinition of solid waste rulemaking of January 4, 1985 (50 FR 614). Since the January 4, 1985 rule is more stringent than the rule under which such States were authorized, such States were required to revise their programs in accordance with § 271.21. Today's proposed changes, if promulgated, will not preclude EPA's ability to authorize States which have subsequently adopted the January 4 rule since it would reduce the scope of the Federal requirements. However, certain aspects of the State's regulation will be broader in scope than the Federal program and therefore not part of the authorized State program. This means that while they are enforceable under State law, they are not subject to Federal enforcement.

40 CFR 271.21(e) (51 FR 33722, September 22, 1986) provides for extensions of time at the discretion of the Regional Administrator for States to adopt changes to their regulations and/or statutes to conform to change in the Federal program. The question arises, however, of whether States which have not yet adopted the January 4 rule must adhere to EPA's published compliance schedules for such adoption. Where States have delayed rulemaking pending today's proposal clarifying the impact of the court's decision, the Regional Administrators may be flexible in further extending the modification deadlines. The Regional Administrators should take into account the States' regulatory and/or legislative procedures in deciding what further extensions may be warranted. However, any States which have delayed rulemaking should now proceed to expeditiously adopt the January 4, 1985, rules as amended by today's notice, when rule changes resulting from today's proposal are finalized.

### V. Executive Order No. 12291— Regulatory Impacts

Under Executive Order No. 12291, EPA must determine whether a regulation is "major" and thus subject to the requirement to prepare a regulatory impact analysis. A rule is major if it will: (1) Have an effect on the economy of \$100 million or more; (2) significantly increase costs or prices to industry; or (3) diminish the ability of the U.S.-based companies to compete in domestic or export markets. The Administrator has determined that today's proposed amendments do not constitute a major rule because the amendments will decrease the scope of the Subtitle C regulatory program. This proposed rule has been submitted to OMB for review under E.O. No. 12291.

### VI. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq., EPA must consider the paperwork burden imposed by any information collection request in a proposed or final fule. This rule will not impose any new information collection requirements.

### VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq., EPA must prepare a regulatory flexibility analysis for all proposed rules unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 601(b), that this rule will not have a

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significant impact on a substantial number of small entities because today's proposed amendments reduce the scope of the Subtitle C regulatory program.

### VIII. Supporting Documents

The documents used in developing this notice are available in the EPA RCRA Docket at Room LG-100, 401 M Street SW., Washington, DC 20460. Persons who wish to view docket materials must make an appointment by calling (202) 475-9327. The docket code number is F-87-SWRP-FFFFF.

### List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: December 31, 1987.

#### Lee M. Thomas

Administrator.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

### PART 261—IDENTIFICATION AND LIST OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6922,

2. Section 261.2 is amended by revising paragraph (c)(3) to read as follows:

### § 261.2 Definition of solid waste.

(c) \* \* \*

(3) Reclaimed. (i) Materials noted with a "\*" in column 3 of Table 1 are solid wastes when reclaimed. Sludges and byproducts will be designated by EPA as solid wastes by listing in § 261.31 or § 261.32 of this part based on consideration of the following factors, no one of which shall be determinative:

(A) Whether the sludge or byproduct, on an industry-wide basis, is typically recycled rather than disposed of;

(B) Whether the sludge or byproduct is replacing a raw material when it is reclaimed (i.e., whether it is reclaimed in a primary rather than a secondary process);

(C) Whether the reclamation practice is closely related to the principal activity of the reclamation facility:

(D) Whether the sludge or byproduct is stored before being reclaimed in a manner designed to minimize loss (for example, by utilizing storage practices that do not involve placement on the land); and

(E) Other appropriate factors.

(ii) The ultimate object in applying these factors is to determine whether the sludges or byproducts are being utilized in on-going, continuous manufacturing processes. However, when the sludges or byproducts contain significant concentrations of toxic constituents not normally found in the raw materials they are replacing, which toxic constituents are not reclaimed by the process, the process may be waste treatment rather than reclamation. In addition, if a byproduct or sludge actually has been designated as a solid waste pursuant to this provision, an individual generator may nevertheless demonstrate that his sludge or byproduct is being reclaimed in an ongoing continuous manufacturing process based on the factors used by the Agency. This demonstration is selfimplementing: but under paragraph (f) of this section, the burden of proof is on the generator making the demonstration. The Agency will not accept demonstrations where there is storage involving placement on the land.

2. Section 261.4 is amended by revising paragraph (a)(8) and by adding paragraphs (a)(9) and (a)(10) to read as follows:

### § 261.4 Exclusions.

(a) \* \* \*

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance:

(ii) Reclamation does not also involve controlled flame combustion for energy recovery (such as could occur in boilers or industrial furnaces) or incineration (by burning in an incinerator);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(9) Oil-bearing hazardous secondary materials from petroleum refining which are converted into petroleum coke at the same facility at which such materials are generated, provided the materials are not stored in a manner involving placement on the land, or accumulated speculatively, before being so recycled. (However, coke produced from such recycling is not a solid waste.)

(10) Oil-bearing hazardous secondary materials from petroleum refining that are generated onsite and reinserted into

the petroleum refining process along with normal process, streams, provided that the materials are not stored in a manner involving placement on the land, or accumulated speculatively, before being so recycled. (Fuels produced from such recycling activities are not solid wastes.)

[FR Doc. 88-310 Filed 1-7-88; 8:45 am]
BILLING CODE 6580-50-M

### FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 74 and 78

[MM Docket No. 86-405; FCC 87-390]

Broadcast Services; Flexible
Operational and Licensing Procedures
for the Broadcast Auxiliary Services
and the Cable Television Relay Service

**AGENCY:** Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action terminates a proceeding that was initiated by a Notice of Inquiry (NOI), FCC 86-453. released November 4, 1986 (51 FR 40990, November 12, 1986) to gather information related to frequency coordination and the feasibility of relaxing licensing for portable and mobile stations in the broadcast auxiliary and the cable television relay services. The record lacks specific proposals and suggestions that could provide guidance to implement required participation in local frequency coordination, a necessary prerequisite to relaxing present licensing procedures.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hank VanDeursen, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in MM Docket No. 86–405, adopted December 15, 1987, and released December 30, 1987.

This full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.